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Supreme Court of the United States

OCTOBER TERM, 19[illegible] 63-

No. [illegible] #1

MANUEL ARISTEGUIETA, ETC., PETITIONER,

vs.

FIRST NATIONAL CITY BANK OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 28, 1960
CERTIORARI GRANTED MARCH 20, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 77

MANUEL ARISTEGUIETA, ETC., PETITIONER,

vs.

FIRST NATIONAL CITY BANK OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. A] Caption (omitted in printing).

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

18176

THE FIRST NATIONAL CITY BANK OF NEW YORK, THE FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Appellants,

v.

MANUEL ARISTEQUIETA, Consul General of The Republic of Venezuela, on behalf of The Republic of Venezuela, Appellee.

Transcript of Record on Appeal—Filed January 20, 1960

APPEARANCES:

Shearman, Sterling & White, 20 Exchange Pl., New York City, and Fowler, White, Gillen, Humkey & Trenam, Industrial National Bank Bldg., Miami, Florida, on behalf of The City National Bank of New York, Appellant.

Coudert Brothers, 488 Madison Avenue, New York City and Fowler, White, Gillen, Humkey & Trenam, Industrial National Bank Bldg., Miami, Florida, on behalf of The French American Banking Corporation, Appellant.

Sage, Gray, Todd & Sims, 37 Wall Street, New York City, and Fowler, White, Gillen, Humkey & Trenam, Industrial National Bank Bldg., Miami, Florida, on behalf of The Royal Bank of Canada, Appellant.

[fol. 1a] Walters, Moore & Costanzo, Ainsley Bldg., Miami, Florida, on behalf of Marcos Perez Jimenez, Appellee.

Ward & Ward, DuPont Bldg., Miami, Florida, and Covington & Burling, 701 Union Trust Bldg., Washington, D. C., on behalf of Manuel Aristequieta, Consul General, Republic of Venezuela, Appellee.

[fol. 2]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

ORDER VACATING NOTICE OF TAKING DEPOSITION—
November 13, 1959

This Cause having come on to be heard on motion of the defendant for a protective order, and the Court having heard the arguments of counsel and being duly advised in the premises, and it being the opinion of the Court that for counsels' guidance and in the interest of proper administration of justice in this cause and within the Court's discretion that fixed rules of procedure should be established for all matters relating to this cause and the Court being of the further opinion that the Federal Rules of Criminal Procedure are the most appropriate for the most part, as opposed to Federal Rules of Civil Procedure, it is hereby

[fol. 3] Ordered, Adjudged and Decreed that as may relate to this particular cause all matters of procedure will be subject to the provisions the Federal Rules of Criminal Procedure as they may apply and the Federal Rules of Civil Procedure will not apply, and it is further

Ordered, Adjudged and Decreed that the Notice of Taking Depositions of George F. Nolte, Assistant Vice-President of the First National City Bank of New York, and other unknown officers and employees of that bank, at 10:30 A. M., November 6, 1959, at New York, and all summonses

connected therewith, be and the same are hereby vacated, the taking of testimony pursuant to said notice and summonses prohibited, and the parties concerned protected against failure of non-compliance therewith.

Done and Ordered at Miami, Florida, this the 13th day of November, 1959.

Emett C. Choate, Judge, United States District Court.

[fol. 4]

IN UNITED STATES DISTRICT COURT

ORDER VACATING ORDER OF NOVEMBER 13, 1959, ETC.—November 23, 1959

This Cause coming on to be heard upon the Petition of the Plaintiff to amend the protective Order of November 13, 1959, and the pronouncements therein, and the Court being advised in the premises, the Court is of the opinion that the Order entered on November 13, 1959 ordering that the procedure for taking of depositions of witnesses in the United States as permitted under the Federal Rules of Civil Procedure should not apply and the procedure is to be governed as stated in the Treaty. That the Court is of the opinion that the right of subpoena exists as relates to witnesses and further that the Court may, by order, provide for the securing of testimony where a witness cannot be secured to appear before the Court. It is,

Ordered, Adjudged and Decreed that the Order of November 13, 1959 entered in the above cause, be and the same, is hereby vacated in so far as it relates to the establishment of special rules governing procedure in the above styled case.

Done and Ordered in Chambers in the Federal Courthouse, Dade County, Florida, this 23rd day of November, 1959.

Emett C. Choate, United States District Judge.

[fol. 5]

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S MOTION FOR THE ISSUANCE OF SUBPOENAS AND GRANTING THEREOF—November 25, 1959

Now comes the plaintiff in this cause, by his undersigned attorney, and respectfully moves the Court for the issuance of subpoenas as set forth in the attached affidavit.

Respectfully submitted,

William G. Ward, 1240 duPont Building, Miami 32, Florida, Attorney for Plaintiff.

Granted and so ordered.

Wm. C. Mathes, United States District Judge.

November 25, 1959

[fol. 6]

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR THE ISSUANCE OF SUBPOENAS

I, Sidney S. Sachs state as follows:

1. I am an attorney for the plaintiff in this case.

2. In this proceeding plaintiff, through counsel, has requested that subpoenas be issued by this court directed to:

(a) George F. Nolte, Assistant Vice-President
First National City Bank of New York (successor to National City Bank of New York),
55 Wall Street, New York City, N. Y.

(b) Walter Anderson, Secretary
French American Banking Corporation,
31 Nassau Street, New York City, N. Y.

(c) J. W. Ganaan, Agent
Royal Bank of Canada (New York Branch),
68 William Street, New York, N. Y.

(d) Isaac B. Grainger, President
Chemical Corn Exchange Bank,
165 Broadway, New York 15, N. Y.

(e) Wallace M. Davis, President
The Hibernia National Bank in New Orleans
Carondelet, Gravier & Union Street, New Orleans, La.

3. In the Amended Complaint, as amended, it is alleged among other allegations, in substance that from 1948 to 1958 the defendant occupied positions of major importance in the Government of Venezuela, in which capacities he administered and controlled the public funds of the Republic, and had responsibility for administering its public affairs.

4. It is further alleged that during such period defendant [fol. 7] by himself and in concert with others engaged in a series of acts which had as an objective his and their illicit enrichment at the expense of the Republic.

5. It is further alleged that during such period defendant (a) by various means and devices abstracted and misappropriated funds whose administration and custody had been entrusted to him by virtue of his office, (b) corruptly discharged the functions of his office by receiving and exacting commissions and other benefits not due to him, paid to him or other persons on his behalf, (c) otherwise corruptly discharged the functions of his office, as a result of which he obtained for himself directly and through persons acting on his behalf, benefits for acts of public administration; that through these means and devices defendant personally profited in the amount of many millions of bolivares (equivalent to many millions of United States dollars).

6. The evidence in this case will show that the persons and corporations whose names are listed on the requested subpoenas are some of the persons with whom defendant acted in concert in conducting his illegal activities.

7. The subpoenas requested are expected to produce evidence of the illegal conduct charged to defendant. It is expected that it will also disclose the method of the illegal concert of action between the defendant and others, as well as the extent and nature of a means for concealment [fol. 8] of his illegal conduct adopted by the defendant.

8. In affiant's opinion it is essential that the requested subpoenas be issued in order that the full evidence may be produced and the interests of justice thereby served.

Sidney S. Sachs, Affiant.

Sworn to and subscribed before me this 25th day of November, A.D., 1959.

(Notarial Seal)

Estefania Santos, Notary Public, State of Florida at Large.

My commission expires: August 4, 1961.

[fol. 9]

IN UNITED STATES DISTRICT COURT

MOTION OF THE FIRST NATIONAL CITY BANK OF NEW YORK, ET AL. TO QUASH—Filed December 10, 1959

Comes Now, The First National City Bank of New York, French American Banking Corporation, and the Royal Bank of Canada, by and through their undersigned attorneys, and show unto the Court that subpoenas duces tecum have been served upon each of the movants requiring the production of certain records and documents referred to therein returnable before the above Court on Monday, December 14th, at 10:00 A.M. In accord with Rule 45 (b) of the Federal Rules of Civil Procedure, the aforementioned movants respectfully move this Court for an Order quashing the aforementioned subpoenas duces tecum and for grounds to be argued, say:

1. That the subject cause out of which the aforementioned subpoenas duces tecum issued is an extradition proceeding in which there is no legal basis or predicate for the issuance of subpoenas at the request of or in behalf of the demanding country, to-wit, the plaintiff herein, and that accordingly this Court is without jurisdiction to issue the same.

2. That it affirmatively appears that the subject cause is in the nature of a civil action and as such, these sub-

poenas were improperly served at a place without the district in which the hearing specified in the subpoenas is to be held and at a distance greater than 100 miles from [fol. 10] the place at which the hearing specified in the subpoenas is to be held in violation of Rule 45 (e)(1) of the Federal Rules of Civil Procedure.

3. That the said subpoenas duces tecum are unreasonable, burdensome and oppressive in that the records and documents sought are so voluminous and cover such an extensive period of time that the movants are unable to comply with the terms thereof without undue expense and inconvenience over an extended period of time which would be necessitated in reviewing and checking records during the ten year period referred to therein.

The First National City Bank of New York, by Shearman & Sterling & Wright and Fowler, White, Gillen, Humkey & Trenam, By Henry Burnett; French American Banking Corporation, by Coudert Bros. and Fowler, White, Gillen, Humkey & Trenam, By Henry Burnett; Royal Bank of Canada, by Sage, Gray, Todd and Sims and Fowler, White, Gillen, Humkey & Trenam, By Henry Burnett, 401 Industrial National Bank Bldg., Miami, Florida.

Certificate of service (omitted in printing).

[fol. 11]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN V. ORAM—Filed December 14, 1959

State of New York,
County of New York, ss.:

John V. Oram, being duly sworn, deposes and says:

1. I am an Assistant Agent at the New York Agency of The Royal Bank of Canada, a corporation organized under the laws of the Dominion of Canada. This affidavit is submitted in support of the motion made by the said Bank to

quash the subpoena served upon the said Bank in New York City returnable in this Court on December 14, 1959.

2. The subpoena would require the said Agency to search through its voluminous records of daily transactions to locate and ear-mark credits and debits of each of eight accounts covered by the subpoena and to locate any instructions, correspondence, credit slips, debit slips and photographic film of checks drawn on the accounts. Examination of the film reels alone would involve examination [fol. 12] of thousands of photographic reproductions of checks in order to locate the checks of a particular accountholder. It is estimated that the time required by the work called for by this subpoena in connection with the debits to the accounts would be in excess of one week at the said Agency and five to seven days at the premises of the processing firm. In addition, it is estimated that a minimum of ten days would be required to search for correspondence, credit and deposit slips and other material called for which are located in the Agency's archives, storage rooms and vaults.

3. The subpoena is unreasonable, burdensome and oppressive not only because of the length of time covered by the subpoena and the volume of material specified, but particularly because under no circumstances could the production of copies of checks drawn on the accounts have any relevancy to the issue in the proceeding as to whether there is sufficient evidence to justify extradition. Withdrawals from the accounts in question could have no possible bearing upon the question as to whether the holder of the account properly or improperly obtained the funds deposited therein.

John V. Oram

Sworn to before me this 11th day of December, 1959.

Edward P. Miller, Notary Public, State of New York, No. 31-2702075; commission expires March 30, 1961.

(Notarial Seal)

[fol. 13]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JEAN DENOYER—Filed December 14, 1959

State of New York,
County of New York, ss.:

Jean Denoyer, being duly sworn, deposes and says:

1. He is vice-president and treasurer of French American Banking Corporation, which has been served with a subpoena in this action by the United States Marshal in the Southern District of New York. Since service of the subpoena, he has familiarized himself with the number and type of the documents required to be produced by the subpoena.

2. The broad categories of documents listed in the schedule attached in the subpoena include documents in several different departments and in many different files of French American Banking Corporation.

3. In the case of some of the persons whose accounts must be searched to locate and produce the documents required by the subpoena, French American Banking Corporation has more than one, and as many as five, accounts relating to a single person; a single account has more than [fol. 14] one hundred separate transactions in the period covered by the subpoena; and each transaction generates two or more separate documents or entries filed or made in different places, and among many other different and unrelated matters.

4. In order to locate and produce a single one of such documents, there is the possible necessity in some cases of examining individually more than one thousand separate credit advices, debit advices, and other materials in the several files of French American Banking Corporation.

5. For a large percentage of the documents required to be produced by the subpoena, it is impossible or impractical to make photographic copies of the original document or entry because of the manner in which such document or

entry is regularly bound for safekeeping in the files and records of French American Banking Corporation, and it would therefore be necessary to make copies by hand of each of such documents and entries.

6. The time and personnel required to locate and copy all of the documents and entries required to be produced by the subpoena is not readily available to French American Banking Corporation.

7. The expense of time, personnel and physical copying of the documents and entries required by the subpoena would be burdensome and oppressive to French American [fol. 15] Banking Corporation.

Jean Denoyer

Subscribed and sworn to before me this 11th day of December, 1959.

Marthe L. Marquet, Notary Public, State of New York, Commission expires: March 30, 1961.

(Notarial Seal)

IN UNITED STATES DISTRICT COURT

ORDER ON HEARING OF DECEMBER 14, 1959 GRANTING MODIFICATION OF SUBPOENAS AND DENYING MOTIONS—December 15, 1959

This cause was continued from the hearing of November 23, 1959, as set forth in the order of this Court dated November 25, 1959. That order provided, among other things:

"The plaintiff has presented its motion for an order of this Court permitting and directing the issuance of certain subpoenas, which said matters will be settled by this Court by separate order.

[fol. 16] "It Is Further Ordered that this cause and further proceedings herein shall be continued until 10:00 o'clock a.m. of December 14, 1959, at which time the defendant is hereby directed to be present in Court."

Pursuant to that order, this cause came on to be heard at 10 o'clock a.m. of December 14, 1959; the defendant and his counsel were present in court, and the plaintiff was represented in court by his counsel.

As stated in the aforesaid order of November 25, 1959, the plaintiff had submitted a motion for the issuance of certain subpoenas, and this Court, on November 25, 1959, entered a further order granting the said motion and issued subpoenas directed to the persons set forth in the affidavit attached to said motion, which persons were as follows:

(a) George F. Nolte, Assistant Vice-President
First National City Bank of New York
(successor to National City Bank of New York),
55 Wall Street, New York City, N. Y.

(b) Walter Anderson, Secretary
French American Banking Corporation,
31 Nassau Street, New York City, N. Y.

(c) J. W. Ganaan, Agent
Royal Bank of Canada (New York Branch),
68 William Street, New York, N. Y.

(d) Isaac B. Grainger, President
Chemical Corn Exchange Bank,
165 Broadway, New York 15, N. Y.

[fol. 17]

(e) Wallace M. Davis, President
The Hibernia National Bank in New Orleans
Carondelet, Gravier & Union Street,
New Orleans, La.

At the hearing on December 14, 1959, it appeared that service of the subpoenas had been effected, and on that day the subpoenas as served were filed with the Clerk of this Court, except as hereinafter noted.

From statement of counsel for the plaintiff, it appeared that when the subpoena was served upon Wallace M. Davis, the President of the Hibernia National Bank in New Orleans, counsel arranged with counsel for said Bank for the making of photostatic copies of records assembled by

said Bank in response to the subpoena, and that such copies of said instruments were furnished to plaintiff's counsel and to defendant's counsel, thus obviating at this time the necessity for further return or further appearance by the said Wallace M. Davis, without prejudice to the rights of either party to this cause to request additional information by additional subpoena or orders of this Court upon further application. The further provisions of this order, therefore, do not apply with respect to the subpoena directed to the said Wallace M. Davis.

In the interim between November 25, 1959, and December 14, 1959, certain motions were filed, as follows:

A motion was filed on behalf of the defendant by his counsel, David W. Walters, to quash or modify all of the [fol. 18] aforesaid subpoenas.

A motion was filed by the firm of Fowler, White, Gillen, Humkey & Trenam as attorneys for the First National City Bank of New York, for the French American Banking Corporation, and for the Royal Bank of Canada, to quash the subpoenas respectively served upon officers of the said respective banks.

A motion was filed by the firm of Smathers, Thompson & Dyer as attorneys for Silvio Gutierrez as a depositor in the Chemical Corn Exchange Bank to quash the portion of the subpoena directed to an officer of said Bank pertaining to his account or accounts with said Bank.

A motion was filed by Scott, McCarthy, Preston, Steel & Gilleland as attorneys for Napoleon Dupouy, a depositor in the French American Banking Corporation and in the First National Bank of New York to quash the subpoenas directed to officers of such banks, insofar as they pertained to him.

In the course of the hearing of December 14, 1959, the defendant through his counsel also filed an additional motion to discharge the defendant from custody and to dismiss the proceedings.

There were present at the hearing of December 14, 1959, counsel for the First National City Bank of New York, for the French American Banking Corporation, and for the Royal Bank of Canada, counsel for Silvio Gutierrez and counsel for Napoleon Dupouy. There was also present a

[fol. 19] representative of Chemical Corn Exchange Bank; he advised the Court that the name of such bank is now Chemical Bank New York Trust Company.

After hearing extensive argument of all counsel and being duly advised in the premises, It Is Ordered, Adjudged and Decreed as follows:

1. The respective motions to quash the subpoenas be and the same are hereby severally denied.

2. The defendant's motion was in the alternative either to quash the subpoenas or to grant modification, and after due consideration, including consideration of the suggestions or comments of various counsel and those of the representative of the Chemical Corn Exchange Bank (now Chemical Bank New York Trust Company), the Court has determined that some modification would be advisable; therefore the subpoenas as issued shall be and hereby are modified in the following particulars:

a. The documents evidencing deposits or withdrawals in the accounts of the various persons specified in the subpoenas which are called for by the subpoenas are limited to deposits or withdrawals of $1,000 or more in United States currency or its equivalent.

b. The period set forth in the subpoenas, which was [fol. 20] from March 14, 1949, to and including November 25, 1959, is amended to the period from March 14, 1949, to and including June 30, 1958.

c. The return date of the subpoenas is changed from December 14, 1959, to 10 o'clock a.m. of January 4, 1960.

3. The defendant's motion to be discharged from custody and to dismiss the proceedings, be and the same is hereby denied, without prejudice.

4. Since this modification of the subpoenas has been announced in open court and all parties concerned were represented before the Court, these modifications of the subpoenas shall stand as the order of this Court without further necessity of personal service, and the parties

concerned shall take notice forthwith of the contents of this order, but counsel for the plaintiff shall serve a copy of this order by mail upon each of the parties upon whom the subpoenas were served, and upon counsel for the individual depositors who have filed their separate motions herein.

5. In the examination of their records and the preparation of information or copies of the same, the said Banks may incur unusual expenses which would not be covered [fol. 21] by the usual witness fees as usually allowed in transactions of this type. If so any of such Banks claiming such unusual expenses may file a motion with this Court setting forth a complete statement of their time and services rendered and the expense thereof, and, unless such expenses can be stipulated to and paid by plaintiff, this Court reserves the right, upon appropriate notice and hearing, to fix a reasonable amount for the reimbursement of said expenses.

6. All proceedings in this cause shall be continued until 10 o'clock a.m. January 4, 1960, at which time the defendant shall present himself in open court.

Wm. C. Mathes, United States District Judge.

December 15, 1959.

[fol. 22]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF GEORGE F. NOLTE—Filed December 16, 1959

State of New York,
County of New York, ss.:

George F. Nolte, being duly sworn deposes and says

1. I am an Assistant Vice President of The First National City Bank of New York with its head office located at 55 Wall Street, New York City.

2. On December 2, 1959 I was served with an undated subpoena duces tecum in this action. The subpoena commands my appearance in Florida on December 14, 1959

with an unreasonably burdensome amount of papers and documents.

This affidavit is submitted in support of a motion for an order which justice requires to protect me from an unreasonable and oppressive demand.

3. Our head office maintains seven open accounts and one closed account for the persons listed in this subpoena. In addition, our Broadway-56th Street branch maintains a regular checking account for another of the persons listed.

4. This subpoena requires copies of checks paid, deposits made, credits and debits to the accounts and statements for over a ten year period, to wit: March 14, 1949 through November 25, 1959. Our branches Recordak, that is, film statements of accounts sent out to depositors. Therefore, for an appropriate search it would be necessary for a man to run through the film until he finds the particular depositor in order to have that statement photographed. This would be necessary for each month for a total of [fol. 23] 128 statements.

5. With reference to obtaining copies of checks paid against the regular checking account involved, it is to be noted that the branch concerned has from 180,000 to 200,000 checks passing through it each month or about 10,000 checks a day. This figure includes regular checking and special checking accounts. All the checks are Recordaked before they are sorted into regular checking, special checking accounts, etc. To find one check would take an average of one day's work to go through the film for the particular day the check was paid. To obtain a copy of the deposit, it would be necessary to go through the entire day's work of deposits for checking accounts to get the particular deposits desired. This, of course, involves taking one or two employees from their regular assignments.

6. As to the eight open and closed accounts at the head office it is estimated that there will be approximately 672 statements. In addition, there are the aforementioned 128 branch bank statements. Each month's statements are bound in a separate book. To obtain one statement for one month an investigator would have to locate the correct book

from among a large number of such books, (most of which are stored in the bank's warehouse), search that book for the particular depositor's statement, take it to the photostat machine, have the book opened and placed under the machine and the statement photostated. It is estimated that it would take the equivalent of one man's time for one [fol. 24] month to obtain all the statements requested in the subpoena for this particular action.

7. The eight accounts at our head office, are maintained on our "Foreign Books", since the depositors are domiciled abroad. On these accounts checks are not returned to the depositor with the monthly statement (as in the case with domestic accounts) but are retained by the bank until requested by the depositor. The checks paid each day are filed as a unit, separated first as to the country of the depositor's domicile, and then alphabetically. In order to obtain the checks paid against each depositor's account, it is necessary to find the date of payment and country of domicile from the statement and then go through the checks paid that day until the particular depositor's check is found.

8. In order to obtain copies of deposit, credit or debit tickets to these accounts, it will be necessary to know which departments made the credit or debit and then request that department to go back through those records for any particular day to extract the one item which it received for credit or for which it made the debit to the account. None of the transactions in the various originating departments are filed alphabetically. Every time a record is withdrawn, the clerk must note on a withdrawal form what was taken and put it in the place of the withdrawn record until such time as the record is returned.

[fol. 25] 9. On the basis of prior experience with lesser requirements, it is estimated that to obtain the records requested herein at least more than a month's working time will be required. The branch bank will have to take at least two employees from regular work and the head office will have to take a minimum of five people from their regular duties to fulfill the requirements of this subpoena, even in such a period of time.

10. The total number of man hours required to produce all the material called for by the subpoena is approximately 1,960, or including supervisory time about 2,000 man hours. It is estimated that seven people working for about forty days, seven hours a day at $2.50 an hour would cost this bank approximately $4,960. This does not include the time and cost of having the necessary photostatic copies made of the records. It will be necessary to detach these trained employees from their regular work in order to respond to this subpoena and to do so will naturally be quite difficult.

George F. Noite

Sworn to before me, December 11, 1959.

Philip D. Ferrall, Notary Public, State of New York, No. 30-6275200, Commission expires March 30, 1960.

[fol. 26]

IN UNITED STATES DISTRICT COURT

ORDER AFTER HEARING OF JANUARY 4, 1960, ON MOTIONS TO QUASH SUBPOENAS, MOTIONS TO EXTEND THE RETURN DAY OF SUBPOENAS, AND OTHER MATTERS—January 4, 1960

This Cause came on to be heard pursuant to the Order on Hearing of December 14, 1959, entered by this Court on December 15, 1959, continuing the hearing herein until January 4, 1960, at 10 o'clock a.m.

The defendant was present in person before the Court, and both the plaintiff and defendant were represented by counsel present before the Court.

Certain named officials of The First National City Bank of New York, the French American Banking Corporation, and the Royal Bank of Canada have heretofore been served with subpoenas which, as subsequently modified, required them to appear and produce records in this cause on January 4, 1960, at 10 o'clock a.m. The aforesaid banks, on December 30, 1959, filed their collective Motion for Extension of the Return Day of the Subpoenas as Modified, in which it was set forth that the movants had filed a notice

of appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the order entered in this proceeding on December 15, 1959, denying their motion to quash the subpoenas served upon their officials, and setting [fol. 27] forth further that it would be impossible for some of the movant banks to make the necessary preparations to respond to the said subpoenas by the said return day of January 4, 1960. The movant banks were represented by Mr. Walter Humkey, who was present before the Court.

Upon consideration of this motion, after being duly advised in the premises, it is Ordered, Adjudged and Decreed that the said motion for an extension of the return day be and the same is hereby denied insofar as movants' prayer was based upon their appeal to the United States Court of Appeals for the Fifth Circuit.

Upon further consideration of the aforesaid motion insofar as it seeks a reasonable extension of the return day to enable the said banks to complete their preparations to comply with the subpoenas, and to that extent the plaintiff having raised no objection thereto, it is Ordered, Adjudged and Decreed that the return day of the said subpoenas be extended to January 27, 1960, at 10 o'clock a.m.

The aforesaid extension of the return day shall also apply to the subpoena heretofore issued to a named official of the Chemical Bank New York Trust Company (formerly Chemical Corn Exchange Bank), which subpoena, as modified, was also returnable on January 4, 1960. Counsel for said bank had requested by letter to this Court dated December 30, 1959, that the return day of such subpoena be extended to January 25, 1960, because such [fol. 28] time was found necessary to enable such bank to comply with such subpoena.

The defendant, through his counsel, David W. Walters, asked that his objection to any extension of the return day with reference to any of the subpoenas be noted. Upon due consideration, the said objection of the said defendant shall be and the same is hereby overruled.

All other proceedings in this cause, other than those which are the subject of subsequent paragraphs of this Order, are hereby continued until January 27, 1960, at

10 o'clock a.m., at which time the defendant shall be present in person.

Subsequent to December 15, 1959, certain motions to quash were filed by parties alleging themselves to be depositors in one or more of the banks whose records have been subpoenaed, as follows:

A Motion to Quash on behalf of Fortunato Herrera and Polinversiones, C.A., was filed by their attorney, Mr. Richard H. Hunt, who was represented in Court by Mr Norman Sand. The purpose of said motion was to quash those portions of the subpoenas pertaining to the account or accounts of Fortunato Herrera and Polinversiones, C.A.

Upon consideration of this motion, after being duly advised in the premises, it is Ordered, Adjudged and Decreed that said motion to quash be and the same is hereby denied. [fol. 29] Pedro A. Gutierrez Alfaro and Lola T. De Gutierrez Alfaro, also known as Lola T. De Gutierrez Alfaro, also filed a Motion to Quash, by their attorney, Mr. L. J. Cushman, who was present in Court. The purpose of said motion was to quash the subpoena served upon a named official of the First National City Bank of New York, insofar as said subpoena pertained to the account or accounts of the movants.

Upon consideration of this motion, after being duly advised in the premises, it is Ordered, Adjudged and Decreed that said motion to quash be and the same is hereby denied.

Subsequent to December 15, 1959, Silvio Gutierrez, through his attorneys, Smathers, Thompson & Dyer, filed a Motion to Stay seeking to extend the return day of the subpoena directed to a named official of the Chemical Bank New York Trust Company, insofar as his account in said bank was concerned. The said party had prior to the hearing of December 14, 1959, filed a motion to quash the said subpoena, which motion was denied by this Court in its order of December 15, 1959. In substance the present motion to stay sets forth that said Silvio Gutierrez has filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the order of December 15, 1959, relating to said movant, and asks that, based upon said appeal, this Court extend the return day

of said subpoena. Said Silvio Gutierrez was represented before the Court by Mr. L. S. Bonsteel.

[fol. 30] Upon consideration of this motion, after being duly advised in the premises, it is Ordered, Adjudged and Decreed that the said motion to stay based upon said appeal be and the same is hereby denied, but it is noted that the return day of the subpoena in question has been heretofore in this Order extended to January 27, 1960, at 10 o'clock a.m.

Subsequent to December 15, 1959, Napoleon Dupouy, through his attorneys, Scott, McCarthy, Preston, Steel & Gilleland, filed a Motion to Stay seeking to extend the return day of the subpoenas directed to named officials of the French American Banking Corporation and the First National City Bank of New York, respectively, insofar as his account or accounts in said banks were concerned. The said party had prior to the hearing of December 14, 1959, filed a motion to quash the said subpoenas, which motion was denied by this Court in its order of December 15, 1959. In substance the present motion to stay sets forth that Napoleon Dupouy has filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the order of December 15, 1959, relating to said movant and asks that, based upon said appeal, this Court extend the return day of said subpoenas. Said Napoleon Dupouy was represented before the Court by Mr. Robert J. Beckham.

Upon consideration of this motion, after being duly advised in the premises, it is Ordered, Adjudged and Decreed that the said motion to stay based upon said appeal [fol. 31] be and the same is hereby denied, but it is noted that the return day of the subpoenas in question has been heretofore in this Order extended to January 27, 1960, at 10 o'clock a.m.

During the hearing counsel for the defendant made an oral motion to have the Court order that the plaintiff be required to be personally present at any hearings in this cause at which the defendant is required to be personally present. The Court announced that it was aware of no requirement of law which made the appearance of the plaintiff in Court on a hearing such as this jurisdictional but,

since there was no objection by plaintiff's counsel, it is Ordered that in all further hearings in this cause the plaintiff shall be personally present at such times as the defendant's personal presence is required. After this matter was raised by the defendant's counsel at the hearing, the plaintiff's counsel communicated with the plaintiff who came to the hearing and was personally present during the remainder thereof.

Done and Ordered this 4th day of January, A. D., 1960.

Wm. C. Mathes, United States District Judge.

[fol. 32]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed December 29, 1959

Notice is hereby given that The First National City Bank of New York, The French American Banking Corporation and The Royal Bank of Canada, each of which has been served with Subpoena Duces Tecum, to appear and produce records at an extradition proceeding in the above styled court on January 4, 1960, issued at the instance and request of the plaintiff above named, each hereby appeals to the United States Court of Appeals for the Fifth Circuit from that portion of the Order dated December 15, 1959 and entered in said extradition proceeding on December 15, 1959, denying the motion of each of said banks to quash the said subpoena which had been served upon it.

Dated at Miami, Florida this 29th day of December, 1959.

The First National City Bank of New York by Shearman & Sterling & Wright and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; French American Banking Corporation by Coudert Bros. and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; The Royal Bank [fol. 33] of Canada, by Sage, Gray, Todd and Sims and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey.

[fol. 36]

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON APPEAL—Filed January 12, 1960

First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada, herewith designate the points upon which they contend the Court erred:

1. The Court erred in denying the motion of First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada, to quash the [fol. 37] subpoena duces tecum served upon each of them in the within proceeding.

2. The subpoena power of the United States District Court cannot be exercised on behalf of the demanding Country in an extradition proceeding.

3. The United States District Court has no power to issue in such a proceeding a subpoena for service upon a witness outside the district in which the said court is located and not within one hundred miles of the place of hearing.

The First National City Bank of New York by Shearman & Sterling & Wright and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; French American Banking Corporation by Coudert Brothers, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; The Royal Bank of Canada by Sage, Gray, Todd and Sims and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey.

[fol. 42]

IN UNITED STATES DISTRICT COURT

SUBPOENA—Filed December 14, 1959

To: George F. Nolte, Assistant Vice-President, The First National City Bank of New York, 55 Wall Street (20 Exch. Pl.), New York, N. Y.

On motion of the plaintiff supported by affidavit in this cause, a proceeding on complaint for extradition under Section 3184 of Title 18 of United States Code, and pursuant to such section and to the Treaty of Extradition between the United States and the Republic of Venezuela,

You Are Hereby Commanded to appear in the United States District Court for the Southern District of Florida, Miami Division, at the Federal Building, 300 N.E. 1st Avenue, City of Miami, Florida, on the 14th day of December, 1959, at 10:00 o'clock a.m. and bring with you the documents, records and other materials specified in the attached schedule; Provided that such appearance need not be made if, prior to December 14, 1959, such documents, records, and other materials are made available to counsel for the plaintiff, and are similarly made available to counsel for the defendant if counsel for the defendant so desires, for inspection, copying and the taking of copies. [fol. 43] If counsel for the plaintiff or defendant take copies of any documents, records or other materials with respect to the accounts of any of the following:

Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C.A.
Edificio Washington, C.A.

the contents of such copies shall not be disclosed by such counsel to any person other than the plaintiff or the defendant herein without further order of this Court, except as may be necessary in the course of offering any such matter in evidence in this proceeding or in the course of preparing copies thereof for the purpose of such offer.

Wm. C. Mathes, U.S. District Judge.

November 25, 1959

RETURN ON SERVICE

Received this writ at New York, N.Y. on Dec. 2, 1959 and on Dec. 2, 1959 at 20 Exchange Place, N.Y.C. New York, N.Y., I served it on the within-named George F. Nolte, Asst. Vice-Pres. The First National City Bank of N.Y. by leaving a copy thereof and ck. for $119.68 with him.

Thomas J. Lunney, U. S. Marshal, SDNY, By: [fol. 44] Harry J. Cant, Deputy U.S. Marshal, SDNY.

Marshal's Fees

Travel	$ .30
Service	.50
	$ .80

SCHEDULE

1. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) drawn from March 14, 1949, to November 25, 1959 (inclusive) against each account maintained in the First National City Bank of New York (including its predecessor the National City Bank of New York) in the name or for the benefit of any person or entity listed in paragraph 6.

2. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) deposited or credited from March 14, 1949 to November 25, 1959 (inclusive) to each account maintained in the First National City Bank of New York (including its predecessor the National City

Bank of New York) in the name or for the benefit of any person or entity listed in paragraph 6.

3. Originals or copies of all statements of account (bank statements) and advices of balance, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the First National City Bank of New [fol. 45] York (including its predecessor the National City Bank of New York) in the name or for the benefit of any person or entity listed in paragraph 6.

4. Originals or copies of all deposit slips and all memoranda, acknowledgments or notations of deposit, credit, transfer or withdrawal, from March 14, 1949 to November 25, 1959 (inclusive) with respect to each account maintained in the First National City Bank of New York (including its predecessor the National City Bank of New York) in the name or for the benefit of any person or entity listed in paragraph 6.

5. Originals or copies of all internal and external instructions, correspondence and other records or written communications, and all records of any oral communications, from March 14, 1949, to November 25, 1959 (inclusive) with respect to each account maintained in the First National City Bank of New York (including its predecessor the National City Bank of New York) in the name or for the benefit of any person or entity listed in paragraph 6.

6. The following persons and entities, without regard to any variation between the following names and the style of any account in which one or more of these names appear, and without regard to the joint or fiduciary character of any account:

Marcos Perez Jimenez
Flor Chalbaud de Perez Jimenez
[fol. 46] Margot Perez Chalbaud
Florangel Perez Chalbaud
Maria Sol Perez Chalbaud
Flor de Maria Perez Chalbaud
Rosa Perez Jimenez de Vargas

Francisco Perez Jimenez
Juan Perez Jimenez
Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Appelwhite
Polinversiones, C.A.
Edificio Washington, C. A.

7. The foregoing paragraphs shall not require production of documents, records, memoranda, correspondence or other materials that are in a foreign country.

[fol. 47]

IN UNITED STATES DISTRICT COURT

SUBPOENA—Filed December 14, 1959

To: Walter Anderson, Secretary, French American Banking Corporation, 31 Nassau Street, New York City, N. Y.

On motion of the plaintiff, supported by affidavit in this cause, a proceeding on complaint for extradition under Section 3184 of Title 18 of United States Code, and pursuant to such section and to the Treaty of Extradition between the United States and the Republic of Venezuela,

You Are Hereby Commanded to appear in the United States District Court for the Southern District of Florida, Miami Division, at the Federal Building, 300 N. E. 1st Avenue, City of Miami, Florida, on the 14th day of December, 1959, at 10:00 o'clock a.m. and bring with you the documents, records and other materials specified in the attached schedule; Provided that such appearance need not be made if, prior to December 14, 1959, such documents,

[fol. 48] records, and other materials are made available to counsel for the plaintiff, and are similarly made available to counsel for the defendant if counsel for the defendant so desires, for inspection, copying and the taking of copies.

If counsel for the plaintiff or defendant takes copies of any documents, records or other materials with respect to the accounts of any of the following:

Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C.A.
Edificio Washington, C.A.
Banco Provincial de Venezuela,

the contents of such copies shall not be disclosed by such counsel to any person other than the Plaintiff or the Defendant herein without further order of this Court, except as may be necessary in the course of offering any such matter in evidence in this proceeding or in the course of preparing copies thereof for the purpose of such offer.

Wm. C. Mathes, U. S. District Judge.

November 25, 1959

RETURN ON SERVICE

Received this subpoena at New York City on Nov. 30, [fol. 49] 1959, and on Dec. 3, 1959 at 120 Broadway, NYC, served it on the within named Walter Anderson, Secretary, by delivering a copy to him and tendering to him the fee

for one day's attendance and the mileage allowed by law. (ck 119.68)

Thomas J. Lunney, U.S. Marsh., By Harry J. Cant, Deputy.

Dated: 12/3/59

Service Fees

Travel	$
Services	
Total	$.....

Subscribed and Sworn to before me, this 4th day of December, 1959.

Frank P. Costa, Notary Public, State of N. Y., No. 03-5829350, Qualified in Bronx County, Commission expires March 30, 1960.

(Notarial Seal)

U. S. Marshal, S. D. N. Y.

Fees	.50
Mileage	.30
Expenses	—
Total	.80

[fol. 50]

SCHEDULE

1. Photostatic or photographic copies of all checks, drafts, and bills of exchange (both sides) drawn from March 14, 1949, to November 25, 1959 (inclusive) against each account maintained in the French American Banking Corporation in the name or for the benefit of any person or entity listed in paragraph 6.

2. Photostatic or photographic copies of all checks, drafts, and bills of exchange (both sides) deposited or credited from March 14, 1949, to November 25, 1959 (inclusive) to each account maintained in the French American

Banking Corporation in the name or for the benefit of any person or entity listed in paragraph 6.

3. Originals or copies of all statements of account (bank statements) and advices of balance, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the French American Banking Corporation in the name or for the benefit of any person or entity listed in paragraph 6.

4. Originals or copies of all deposit slips and all memoranda, acknowledgments or notations of deposit, credit, transfer or withdrawal, from March 14, 1949, to November 25, 1959 (inclusive) with respect to each account maintained in the French American Banking Corporation in the name [fol. 51] or for the benefit of any person or entity listed in paragraph 6.

5. Originals or copies of all internal and external instructions, correspondence and other records or written communications, and all records of any oral communications, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the French American Banking Corporation in the name or for the benefit of any person or entity listed in paragraph 6.

6. The following persons and entities, without regard to any variation between the following names and the style of any account in which one or more of these names appear, and without regard to the joint or fiduciary character of any account:

Marcos Perez Jimenez
Flor Chalbaud de Perez Jimenez
Margot Perez Chalbaud
Florangel Perez Chalbaud
Maria Sol Perez Chalbaud
Flor de Maria Perez Chalbaud
Rosa Perez Jimenez de Vargas
Francisco Perez Jimenez
Juan Perez Jimenez
Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez

Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C.A
Edificio Washington, C.A.

[fol. 52] 7. Originals or copies of all records, statements of account, deposit slips, acknowledgments, advices or notations of deposit, credit, debit, transfer or withdrawal, and memoranda, instructions, correspondence, and all other records and written communications and all records of any oral communications, whether internal or external, from March 14, 1949 to November 25, 1959 (inclusive) relating to the entire transaction or series of transactions of French American Banking Corporation with the Banco Provincial de Venezuela that are referred to in a letter of December 1, 1954 from Marcos Perez Jimenez to French American Banking Corporation, and in French American Banking Corporation's reply and enclosure of December 7, 1954.

8. The foregoing paragraphs shall not require the production of documents, records, memoranda, correspondence or other materials that are in a foreign country.

[fol. 53]

IN UNITED STATES DISTRICT COURT

SUBPOENA—Filed December 14, 1959

To: J. W. Ganaan, Agent, Royal Bank of Canada (New York Branch), 68 William Street, New York, N. Y.

On motion of the plaintiff supported by affidavit in this cause, a proceeding on complaint for extradition under Section 3184 of Title 18 of United States Code, and pursuant to such section and to the Treaty of Extradition between the United States and the Republic of Venezuela,

You Are Hereby Commanded to appear in the United States District Court for the Southern District of Florida,

Miami Division, at the Federal Building, 300 N. E. 1st Avenue, City of Miami, Florida, on the 14th day of December, 1959, at 10:00 o'clock a.m. and bring with you the documents, records and other materials specified in the attached schedule; Provided that such appearance need not be made if, prior to December 14, 1959, such documents, records, and other materials are made available to counsel for the plaintiff, and are similarly made available to counsel for the defendant if counsel for the defendant so desires, for inspection, copying and the taking of copies.

If counsel for the plaintiff or defendant takes copies of any documents, records or other materials with respect [fol. 54] to the accounts of any of the following:

Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C.A.
Edificio Washington, C.A.

the contents of such copies shall not be disclosed by such counsel to any person other than the plaintiff or the defendants herein without further order of this Court, except as may be necessary in the course of offering any such matter in evidence in this proceeding or in the course of preparing copies thereof for the purpose of such offer.

Wm. C. Mathes, U. S. District Judge.

November 25, 1959.

RETURN ON SERVICE

Received this subpoena at New York City on Nov. 30, 1959 and on December 3, 1959 at 68 William Street, NYC served it on the within named J. W. Ganaan, true name

J. W. Ganann, agent, by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law.

Thomas J. Lunney, U.S. Marsh., By Harry J. Cant, Deputy.

Dated: December 3, 1959

[fol. 55]

Service Fees

Travel $

Services

Total $.....

Subscribed and Sworn to before me, this 4th day of December, 1959.

Frank P. Costa, Notary Public, State of N. Y., No. 03-5829350, Qualified in Bronx County, Commission expires March 30, 1960.

U. S. Marshal, S. D. N. Y.

Fees .50

Mileage .30

Expenses

Total .80

SCHEDULE

1. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) drawn from March 14, 1949, to November 25, 1959 (inclusive) against each account maintained in The New York Branch (including any office in New York) of The Royal Bank of Canada in the name or for the benefit of any person or entity listed in paragraph 6.

[fol. 56] 2. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) deposited

or credited from March 14, 1949, to November 25, 1959 (inclusive) to each account maintained in The New York Branch (including any office in New York) of The Royal Bank of Canada in the name or for the benefit of any person or entity listed in paragraph 6.

3. Originals or copies of all statements of account (bank statements) and advices of balance, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in The New York Branch (including any office in New York) of The Royal Bank of Canada in the name or for the benefit of any person or entity listed in paragraph 6.

4. Originals or copies of all deposit slips and all memoranda, acknowledgments or notations of deposit, credit, transfer or withdrawal, from March 14, 1949, to November 25, 1959 (inclusive) with respect to each account maintained in The New York Branch (including any office in New York) of The Royal Bank of Canada in the name or for the benefit of any person or entity listed in paragraph 6.

5. Originals or copies of all internal and external instructions, correspondence and other records or written communications, and all records of any oral communications, from March 14, 1949, to November 25, 1959 (inclu- [fol. 57] sive) with respect to each account maintained in The New York Branch (including any office in New York) of The Royal Bank of Canada in the name or for the benefit of any person or entity listed in paragraph 6.

6. The following persons and entities, without regard to any variation between the following names and the style of any account in which one or more of these names appear, and without regard to the joint or fiduciary character of any account:

Marcos Perez Jimenez
Flor Chalbaud de Perez Jimenez
Margot Perez Chalbaud
Florangel Perez Chalbaud
Maria Sol Perez Chalbaud

Flor de Maria Perez Chalbaud
Rosa Perez Jimenez de Vargas
Francisco Perez Jimenez
Juan Perez Jimenez
Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C.A.
Edificio Washington, C.A.

7. The foregoing paragraphs shall not require the production of documents, records, memoranda, correspondence or other materials that are in a foreign country.

[fol. 60] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 65]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, Plaintiff,

vs.

MARCOS PEREZ JIMENEZ, Defendant.

NOTICE OF DEPOSITION—Filed November 12, 1959

Please take notice that plaintiff demands that The First National City Bank of New York appear at 10:30 A.M. on November 16 1959, at Room 601, United States Court

House for the United States District Court for the Southern District of New York, Foley Square, Borough of Manhattan, New York, New York, at which time and place plaintiff will take the deposition upon oral examination of George F. Nolte, Assistant Vice-President of The First National City Bank of New York, and of any other officer [fol. 66] or employee having knowledge of the facts, pursuant to the Federal Rules of Civil Procedure, before an officer authorized by law to administer oaths.

The examination will continue from day to day until completed.

Howard C. Westwood, David C. Acheson, Attorneys for Plaintiff, 701 Union Trust Building, Washington 5, D. C.

Of Counsel: John Logan O'Donnell, Esq., Olwine, Connelly, Chase, O'Donnell & Weyher, 52 Vanderbilt Avenue, New York 17, New York.

Affidavit of Service (omitted in printing).

[fol. 67]

IN UNITED STATES DISTRICT COURT

NOTICE OF DEPOSITION—Filed January 15, 1960

Please take notice that plaintiff demands that the French American Banking Corporation appear at 10:30 a.m. on November 17, 1959, at Room 601, United States Court [fol. 68] House for the United States District Court for the Southern District of New York, Foley Square, Borough of Manhattan, New York, New York, at which time and place plaintiff will take the deposition upon oral examination of Walter Anderson, Secretary of the French American Banking Corporation, and of any other officer or employee having knowledge of the facts, pursuant to the Federal Rules of Civil Procedure, before an officer authorized by law to administer oaths.

The examination will continue from day to day until completed.

William G. Ward, 1240 Dupont Building, Miami, Florida; David C. Acheson, 701 Union Trust Building, Washington 5, D. C., Attorneys for plaintiff.

Of Counsel: John Logan O'Donnell, Esq., Olwine, Connelly, Chase, O'Donnell & Weyher, 52 Vanderbilt Avenue, New York 17, New York.

To: David W. Walters, Esq., Walters, Moore & Costanzo, 1008 Ainsley Building, Miami 32, Florida, Attorney for defendant.

[fol. 69] Affidavit of Service (omitted in printing).

[fol. 70]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION FOR PROTECTIVE ORDER, PURSUANT TO RULE 30(b), FEDERAL RULES OF CIVIL PROCEDURE—Filed November 12, 1959

Comes Now the defendant, by and through his undersigned attorney, and makes this his motion for a protective order, prohibiting the taking of the depositions of George F. Nolte, Assistant Vice-President of The First National City Bank of New York, and other unknown officers and employees of that bank, at 10:30 A.M., November 6, 1959, at Room 601 United States Courthouse for the United States District Court for the Southern District of New York, Foley Square, Borough of Manhattan, New York, New York, pursuant to a notice of deposition received from attorneys for the plaintiff under date of November 11, 1959, and for reasons thereof states:

1. That the notice of deposition fails to meet the legal requirements imposed by Rule 15 of the Federal Rules of Criminal Procedure, for the reason that there has been no showing made to the Court that the witnesses' testimony is material and that it is necessary to take their deposi-

tions in order to prevent a failure of justice, and that no [fol. 71] order of the Court has been entered giving leave for the taking of said depositions, as required by Rule 15 (a) of the Federal Rules of Criminal Procedure.

2. That the notice of deposition fails to meet the legal requirements of Rule 15(b) of the Federal Rules of Criminal Procedure, inasmuch as the notice thereof is both unreasonable and fails to state the name and address of *each* person to be examined.

3. That the notice of deposition indicates that the deponents are officers and employees of The First National City Bank of New York, and no showing as to the materiality or the relevancy of their testimony has been established; however, presupposing that the testimony elicited will concern matters of privacy and secrecy concerning the deposits or banking transactions of the defendant with the bank, then and in that event, failing an order of the Court for the taking of the depositions, the proceedings would be violative of the Fourth and Fifth Amendments to the Constitution of the United States.

Wherefore, defendant makes this his motion to the Court for a protective order, pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, to the effect that the deposition shall not be taken unless upon order of the Court, and that the notice of taking deposition be vacated as fatally defective.

[fol. 72] Walters, Moore & Costanzo, Attorneys for Defendant, By David W. Walters.

Certificate of Service (omitted in printing).

IN UNITED STATES DISTRICT COURT

ORDER VACATING DEPOSITION NOTICE AND SUMMONSES—Entered November 13, 1959

This Cause having come on to be heard on motion of the defendant for a protective order, and the Court having heard the arguments of counsel and being duly advised in the premises, and it being the opinion of the Court that for

[fol. 73] counsels' guidance and in the interest of proper administration of justice in this cause and within the Court's discretion that fixed rules of procedure should be established for all matters relating to this cause and the Court being of the further opinion that the Federal Rules of Criminal Procedure are the most appropriate for the most part, as opposed to Federal Rules of Civil Procedure, it is hereby

Ordered, Adjudged and Decreed that as may relate to this particular cause all matters of procedure will be subject to the provisions of the Federal Rules of Criminal Procedure as they may apply and the Federal Rules of Civil Procedure will not apply, and it is further

Ordered, Adjudged and Decreed that the Notice of Taking Depositions of George F. Nolte, Assistant Vice-President of The First National City Bank of New York, and other unknown officers and employees of that bank, at 10:30 A. M., November 6, 1959, at New York, and all summonses connected therewith, be and the same are hereby vacated, the taking of testimony pursuant to said notice and summonses prohibited, and the parties concerned protected against failure of non-compliance therewith.

Done and Ordered at Miami, Florida, this the 13th day of November, 1959.

Emett C. Choate, Judge, United States District Court.

[fol. 74]

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR THE ISSUANCE OF SUBPOENAS—Filed November 25, 1959

Omitted. This matter appears on printed page 4, side folio 6, ante.

[fol. 77]

IN UNITED STATES DISTRICT COURT

DEFENDANT, MARCOS PEREZ JIMENEZ'S MOTION TO QUASH OR MODIFY SUBPOENAS—Filed December 8, 1959

Comes Now the defendant, Marcos Perez Jimenez, by and through his undersigned attorney, and on behalf of himself, his wife and children, makes this his motion to

quash or modify the subpoenas duces tecum served upon Walter Anderson, Secretary, French American Banking Corporation; Wallace M. Davis, President of the Hibernia National Bank in New Orleans; J. W. Gannan, Agent, Royal Bank of Canada (New York branch); Isaac B. Grainger, President, Foreign Exchange Bank; and George F. Nolte, Assistant Vice President, First National City Bank of New York, to produce among other things bank records pertaining to the defendant, his wife and children covering the period March 14, 1949 to November 25, 1959, inclusive, on the ground that compliance would be unreasonable and oppressive to the detriment of the defendant for the following reasons, to wit:

[fol. 78] 1. That the records sought to be produced are incompetent, irrelevant and immaterial;

2. That the complaint charges embezzlement or criminal malversation for a period between 1948 and January 23, 1958, and all bank records and transactions from January 23, 1958 until November 25, 1959, as required in the subpoenas to be produced, are incompetent, irrelevant and immaterial to the proceedings;

3. That the issuance of a subpoena as an aid to an investigation by the plaintiff in the conduct of extradition proceedings is illegal and improper;

4. That the providing of an opportunity to the plaintiff to have unlimited access to unlimited documents of a personal and private character, the property of the defendant, his relatives, friends and various former associates is oppressive and unreasonable, and the information derived therefrom is likely to prejudice the personal interests and welfare of each and every party concerned in some form of reprisal by the Venezuelan Government against these individuals in matters completely unrelated to these proceedings.

[fol. 79] Wherefore, the defendant prays that the subpoenas be quashed or modified as justice would best serve.

Walters, Moore & Costanzo, Attorneys for Defendant, By David W. Walters.

Certificate of Service (omitted in printing).

[fol. 80]

IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF RETURN DAY OF SUBPOENA AS MODIFIED—Filed December 29, 1959

The First National City Bank of New York, The French American Banking Corporation and The Royal Bank of Canada, show unto the Court that each of the movants has heretofore been served with subpoena Duces Tecum to appear and produce records in the above-styled extradition proceeding; that the said subpoena was modified by order of this Court entered December 15, 1959; that the return day of the said subpoena as modified is January 4, 1960, at 10:00 o'clock A.M. in the above-styled court; that some of the movants have been unable to make preparations adequate to enable them to respond as required by the subpoena and within the time designated as the return day, to wit: January 4, 1960; that each of the movants has this day filed Notice of Appeal from that portion of the order entered in this proceeding on December 15, 1959 denying the motion of each movant to quash the said subpoena; that it will be impossible to make the necessary preparation to respond to the said subpoena by the said return day.

Wherefore, the movants pray that the court will enter an order herein further modifying the said subpoena to extend the return day indefinitely and until the movants [fol. 81] have had the opportunity of presenting the said portion of the Order of December 15, 1959, for review by the United States Court of Appeals for the Fifth Circuit, either by way of said appeal or by Application for an Extraordinary Writ, as the case may be and until a time subsequent to final disposition of the said appellate review.

The First National City Bank of New York by Shearman & Sterling & Wright and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; French American Banking Corporation by Coudert Bros. and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; The Royal Bank

of Canada, by Sage, Gray, Todd and Sims and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey, 401 Industrial National Bank Bldg., Miami, Florida.

[fol. 82]

IN UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-Civil

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, Plaintiff,

vs.

MARCOS PEREZ JIMENEZ, Defendant.

Excerpts of Transcript of Hearing—November 23, 1959

The above-entitled matter came on for hearing before the Honorable William C. Mathes, Judge of the United States District Court, at Miami, Florida, on Monday, November 23, 1959, commencing at 10 o'clock a.m.

APPEARANCES:

W. G. Ward, Esq., of the firm of Ward & Ward and Howard Westwood and Sidney Sachs, Esqs., Appearing on behalf of the Plaintiff.

David W. Walters and Edward N. Moore, Esqs., of the firm of Walters, Moore & Costanzo, Appearing on behalf of the Defendant.

• • • • • • •

[fol. 83] Afternoon Session

2 o'clock p.m.

Thereupon: The following proceedings were had:

COLLOQUY BETWEEN COURT AND COUNSEL RE ISSUANCE OF A SUBPOENA FOR THE PRODUCTION OF THE PAPERS IN QUESTION, ETC.

The Court: Before the noon recess we were discussing the motion for a bill of particulars.

Mr. Westwood: Your Honor, Mr. Walters and I have discussed the matter over the recess on this question of subpoenas. I have a suggestion to make which, as I understand it, Mr. Walters is agreeable to except, of course, this wouldn't in any way affect his rights to object on other grounds, but the suggestion is this: That your Honor issue a subpoena for the production of the papers in question.

Mr. Walters: Under the Criminal Rules.

Mr. Westwood: Yes, under the Criminal Rules.

The Court: Do the pleadings say anything on this?

Mr. Westwood: No, your Honor.

Mr. Walters: I think we can probably agree that the procedure is pretty much yours. You are charged with the responsibility of creating a record which is equivalent to a commitment proceeding, preliminary proceedings.

The Court: Preliminary hearing.

Mr. Walters: And the laws, for the most part, seem to indicate that is pretty much your discretionary power. [fol. 84] The Court: I thought there was something in the pleadings and I did not remember what it was.

Mr. Walters: It says that the Court will proceed to establish evidence of criminality, legal evidence of criminality on the basis of the laws of this country.

Mr. Westwood: It may be that your Honor had in mind the provision of Article 11, the second sentence of the third paragraph thereof which says: "The judicial functionary shall prescribe the method of complying with the legal formality of the country of which the extradition is requested." That particular language may or may not have had this kind of problem in mind, but it would seem not unreasonable to embrace the idea that the Judge in an extradition hearing can determine how the process is to proceed.

Mr. Walters: I do not quarrel with the power of the Court or the power of the subpoena under the Criminal

Rules for a man that is present, where the documents are presented at the hearing. I have some quarrel whether or not depositions are proper. I felt that the Statute does not cover the depositions in this country.

Mr. Westwood: Well, our thought, your Honor, was that a subpoena could be issued and perhaps have right in the subpoena itself a proviso that if the plaintiff and defendant are permitted to examine the documents and to [fol. 85] make copies of such of them as they care to, then it will be unnecessary to produce the documents in response to the subpoena.

The Court: Do you contemplate a showing by affidavits such as Rule 17(b) requires, 17(b) of the Rules of Criminal Procedure, that is, a showing of the evidence, the material—

Mr. Westwood: Yes, your Honor.

The Court: Of course, this refers to a defendant's subpoena—material to the defense.

Mr. Westwood: The indigent defendant's provision.

The Court: Yes.

Mr. Westwood: That 17(b) has to do with the provision of the indigent defendant.

Mr. Walters: I can't make that claim exactly after the presentation that counsel has been making.

The Court: I am not referring to that, but I am thinking of the showing, the maximum showing that will be required and the affidavit was made and the affidavit was served along with the subpoena. It might help meet such a situation.

Mr. Westwood: Yes, sir.

The Court: It might help meet such a situation en- [fol. 86] countered in the letter I called your attention to this morning.

Mr. Westwood: Actually, your Honor, the letter refers to the Banco Provisional, Venezuela. We do not propose to ask for those documents anyway. I think that would probably eliminate the principal problem.

Mr. Walters: I also received a letter from the counsel of the First National Bank in New York which is a similar report and perhaps I also ought to have that included in here. It was directed to me, but for what reason I don't know, because I do not have any control over Perez, because I was resisting it, but they make a similar protest.

The Court: Do you wish to file it?

Mr. Walters: Yes, I think it may be a good idea.

The Court: You may file that.

Mr. Westwood: My thought, your Honor, and this is what Mr. Walters and I discussed, as I said, if the subpoena actually has in it a proviso relieving them of the need to produce the documents in the event we can examine them and make copies, that ought to eliminate most of the problem.

The Court: Yes, I should think so.

Would this be a subpoena to bring the records here to the hearing?

[fol. 87] Mr. Walters: Yes.

Mr. Westwood: It would say bring the records here on a date set forth and then there would be a proviso relieving them of that obligation if the permission to examine and to copy were afforded, unless something very unexpected were to arise. I think Mr. Walters and I both feel that there would be, in all likelihood, the inspection and that the problem either would entirely disappear or later on, if there remains any problem, it would be of a much narrower compass.

The Court: Well, we could fix a return date on it and continue this hearing, I suppose, until the 14th of December.

Mr. Westwood: Yes.

The Court: Do you think you would be ready by then? If not, we will continue it to the following Monday.

Mr. Westwood: Yes, we could aim at that and have that as the return date. I am sure before that time the problem will have been pretty much clarified. If any question remains we can come back to your Honor with it.

The Court: Very well. In view of that, gentlemen, I think it might be well to enter an order denying the motion for a bill of particulars at this time with leave of the defendant to renew the motion or to bring in a different motion in the future some time.

[fol. 88] Mr. Walters: There is only one matter I think we have to have some caution on and that is I have not received a copy directly of the other subpoenas. There are a number of people whose records are requested from the bank and I don't know whether or not, for their interest,

that copies should be made that might find their way back to Venezuela which might prejudice those individuals. They happen to be mostly Venezuelans and from a standpoint of making copies, I don't know whether that might be proper. It is not ordinarily permitted to make copies of those.

The Court: If you gentlemen can agree upon a protective order it seems to me it might be well. Upon making the copies counsel, of course, is responsible for them without the consent of the order of the Court.

Mr. Westwood: Yes, I would think that would make good sense, your Honor, because certainly there is no disposition to make any ulterior use of this material.

The Court: And that would still protect the interest of your client, too. Do you suppose you could formulate some such order?

Mr. Westwood: I think we can.

The Court: You do not need to recite these are made on stipulation. You both will just approve of them in form and I will make the order on the plaintiff's motion.

[fol. 89]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-Civil

[Title omitted]

Miami, Florida
December 14, 1959

Excerpts of Transcript of Hearing—December 14, 1959

The above-entitled matter came on for further hearing before the Honorable William C. Mathes, Judge of the United States District Court, at Miami, Florida, on Monday, December 14, 1959, commencing at 10 o'clock a.m.

APPEARANCES:

As heretofore noted.

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[fol. 90] The Court: Mr. Westwood, I think it might facilitate matters to hear you in defense of the subpoenas first.

STATEMENT ON BEHALF OF PLAINTIFF BY MR. WESTWOOD IN DEFENSE OF THE SUBPOENAS

Mr. Westwood: Very well.

If your Honor please, I don't like to start in an argument with an apology; but since I saw the documents so recently, I may not be as tight-knit as I would be if I had had further preparation.

First of all, there is a motion by the defendant which raises one of the questions, as I see it. Then there is a motion by three of the banks which have the documents in their possession. And then there are motions, I believe, by two depositors, one of whom is a depositor in one of the banks that has not made a motion, which, I think, may have somewhat different considerations bearing upon it.

It will facilitate, I believe, an understanding of just what the issues are if we go back and refresh our recollection as to how we got to this point.

On or about the 9th of November, we, as counsel for the plaintiff, served a notice of taking deposition on one of the banks which has now filed a motion attacking the subpoena. I should know, but I don't recall just now whether we had served notice on any of the other banks at that time or not. But it was apparent that we had that in mind. [fol. 91] That notice was served as contemplated by the Federal Rules with respect to ordinary deposition.

Of course, counsel for the defendant became aware of the proposal to take such depositions and then filed in this court a motion which, in effect, was an attack on the whole proposal. His position was that the Federal Rules were not applicable. It was his position that the Civil Rules were not applicable and that a deposition procedure was not permissible in a proceeding of this kind.

That motion by the defendant came on for hearing before Chief Judge Choate, your Honor having been absent from the city. Judge Choate entered two orders: The first order was entered immediately upon conclusion of the ar-

gument on the defendant's motion, as I recall it, and was dated on or about November 13th. I may be a little off on my dates. But in any event, it stated that it is ordered that all matters of procedure will be subject to the provisions of the Federal Rules of criminal procedure as they may apply, and the Federal Rules of civil procedure will not apply.

He then had his order go on and he prohibited the taking of the depositions. There had been oral colloquy in the course of argument before the Chief Judge in which it was recognized that this was an important question and that it might not be free from doubt. There had been some discussion of the possibility of an appeal. Upon reading [fol. 92] the order of the Chief Judge and finding in it nothing as to permission to appeal, counsel for the plaintiff filed a motion or a request asking that the order be modified so as to permit an appeal which, as your Honor knows, is necessary to perfect in a matter of this kind at this stage. At least, I think it is.

The Court: Under the Interlocutory Appeal Act.

Mr. Westwood: Yes, your Honor.

That matter, I believe, was not orally argued; or was it?

Mr. Ward: Yes.

Mr. Westwood: There was an oral presentation and discussion of that motion before the Chief Judge which again I think was on the—I don't remember whether it was the week before November 23rd or not. As a result of that discussion, the Chief Judge entered a second order. The terms of the second order are very important. That order bears, your Honor, the date of November 23rd, which was the Monday when your Honor returned to the city and we had the previous proceedings before your Honor. It is short and perhaps it would be helpful if I read it, because it superseded his previous order.

It states: "This cause coming on to be heard upon petition of the plaintiff to amend the protective order of November 13, 1959, and the pronouncement therein; and the court being advised in the premises, the court is of the [fol. 93] opinion that the order entered on November 13th, ordering that the procedure for taking of depositions of witnesses in the United States, as permitted under the Fed-

eral Rules of Civil Procedure, should not apply, and the procedure is to be governed as stated in the Treaty. The court is of the opinion that the right of subpoena exists as relates to witnesses and further that the court may, by order, provide for the securing of testimony where a witness cannot be secured to appear before the Court.

It is ordered, adjudged, and decreed that the order of November 13, 1959, entered in the above cause, be and the same is hereby vacated in so far as it relates to the establishment of special Rules governing procedure in the above-styled case."

So that completely superseded the previous order and, as I understand it, states or recognizes that an extradition proceeding is one conducted pursuant to the terms of the Treaty and that that one does not simply impose the Federal Criminal Rules as the procedure that shall be followed, which was the position that had been taken in the order of November 13th.

Now, thereupon, discussion occurred before your Honor, on November 23rd with respect to this matter of seeking to get at the records in the banks. Before your Honor at that time I endeavored to make clear on behalf of the [fol. 94] plaintiff that the immediate problem was to see the records and to see if copies could be made of them. It made no difference to us, as a practical matter, whether it was under the criminal Rules or the civil Rules. If copies could be made both by the defendant, if he desired, and by the plaintiff, that would meet the immediate problem. So that the issue actually was before your Honor and was a very narrow one.

We had a discussion of that matter prior to the noon recess before your Honor. Your Honor will recall that in the course of colloquy it appeared that perhaps Mr. Walters and I could discuss the matter and some solution to the problem would evolve.

I would like to refresh your Honor's recollection as to what Mr. Walters, attorney for the defendant, said at that time. I am referring to the transcript of those proceedings, beginning at page 65, which is immediately after the noon recess.

At the beginning of the afternoon session, I opened with a statement that Mr. Walters and I had discussed the matter and that I had a suggestion which I thought Mr. Walters would find agreeable subject, of course, to the reservation of his rights. Mr. Walters then indicated that he was thinking of a proceeding which would be more or less modeled under the Criminal Rules.
[fol. 95] The Court said:

"The Court: Do the pleadings say anything on this?" That is an obvious mistake. What the Court said was: "Does the Treaty say anything on this?" The word "pleadings" is substituted for "Treaty" in one or two places on subsequent pages.

It goes on:

"Mr. Westwood: No, your Honor."

Then later, as I will point out, I recall what your Honor probably had in mind.

Then Mr. Walters said:

"Mr. Walters: I think we can probably agree that the procedure is pretty much yours. You are charged with the responsibility of creating a record which is equivalent to a commitment proceeding, preliminary proceedings.

"The Court: Preliminary hearing.

"Mr. Walters: And the laws, for the most part, seem to indicate that is pretty much your discretionary power.

"The Court: I thought there was something in the pleadings—" should be "Treaty"—"and I did not remember what it was."

Then it goes on:

"Mr. Walters: It says that the Court will proceed to establish evidence of criminality, legal evidence of crim-
[fol. 96] inality on the basis of the laws of this country."

And I referred to that portion of Article 11 of the Treaty which your Honor may have had in mind. Then note this:

"Mr. Walters: I do not quarrel with the power of the Court or the power of the subpoena under the Criminal

Rules for a man that is present, where the documents are presented at the hearing. I have some quarrel whether or not depositions are proper. I felt that the Statute does not cover the depositions in this country."

Without attempting to read into Mr. Walters' theory what he may have had in mind—although I think it is apparent—I might suggest this which I think would help in understanding. There is some question perhaps as to whether the deposition procedure under the Federal Rules would be appropriate in that there is the question of the confrontation by the defendant of the witness. I am going to come to that later in the argument.

But I think that may be one reason that Mr. Walters was drawing a distinction between proceeding under the criminal rules and under the civil rules. In any event, the important thing is that Mr. Walters made it very clear. He says, "I do not quarrel with the power of the Court."

Now, it was as a result of our agreement in this col- [fol. 97] loquy with your Honor—and remember we then considered the terms of the Treaty in Article 11 to which I referred—that Mr. Walters and I continued to discuss the matter with your Honor. And as a result of that discussion the suggestion arose that a proviso be included in a subpoena to be issued by your Honor which would make it unnecessary for the actual production of the documents here if the inspection and copying were permitted prior to the return date.

Then at the end of the discussion, along about page 70 or 71 of the transcript, Mr. Walters mentions the problem of third parties who might be concerned about their records being examined, lest there be a retaliation in Venezuela. I made it clear on behalf of the Government of Venezuela that no such thought was in mind.

I think it was your Honor that suggested a protective provision which, in fact, later was included in the subpoena which provided that as to the persons other than the defendant and the members of his family, neither counsel for the plaintiff nor counsel for the defendant, upon the inspection, would be permitted to disclose any of the infor-

mation as to their accounts to persons other than the plaintiff himself and the defendant himself.

I may say that I construe the plaintiff to mean Manuel Aristeguiera personally, and not to embrace other persons [fol. 98] in the Venezuelan Government; so that any such information would be disclosed only among counsel until and unless there is material which, of course, is to be offered in evidence.

As a result of this rather lengthy discussion before your Honor, your Honor suggested that an order for a subpoena be drafted, which was done. I took the liberty of drafting an order pursuant to your Honor's suggestion. There was an affidavit also which later was executed by my brother counsel, Mr. Sachs, which was presented later to your Honor, covering both the order on the issuing subpoenas and the motion for the issuance, which was just a one-sentence matter that referred to the affidavit that was attached. The affidavits were shown to Mr. Walters ahead of time and we, of course, had a conference. Mr. Walters and I had a conference in his office and then called your Honor and made a date to see your Honor in chambers Wednesday afternoon, November 25th. We did meet then with Your Honor, and Mr. Walters and I and the subpoenas were gone over by your Honor. Your Honor went over the subpoena at that time in chambers, and Mr. Walters and I were present. The terms of the subpoena were very clear.

Now, I have gone into this in some detail, your Honor, because the motion filed on behalf of the defendant—and your Honor will pardon me if I do not carry in my mind its exact terms, was in effect an attack upon the whole sub- [fol. 99] poena on all grounds, I believe.

I would simply make the point that the defendant has waived the objection that the defendant now asserts. Most certainly the defendant, if it did have objection to the breadth of the subpoena or its terms or what was covered, should have made that point on November 23rd, 24th and 25th, when we had this matter up with your Honor before.

I hope I am never going to be in a proceeding technical or hairsplitting, but I think this is a bit more than a technicality. I think that where this matter was done as it was,

in so far as the defendant is concerned, there was full notice, full consideration, and a very deliberate position taken by the defendant and it was apparently on the face of that, that your Honor took the action that your Honor did.

Now, by this recital of history, I do not mean to imply that I am not coming to the question of your Honor's power. But before coming to that, I want to make only one observation as to those considerations which are applicable to the motions filed on behalf of the banks and on behalf of the depositors. This may not be true of the motion on behalf of the banks; it is true in the motion on behalf of the two depositors, I believe, as I recall them. They raised points which clearly they are in no position to urge.

They talk about the matter not being relevant and not [fol. 100] being material to the case. That is none of their business, if I may be blunt. At the most they can only raise questions of their personal privilege if they have such. That is not disclosed in their position or in their motion.

Perhaps, although I am not even sure of that, they can raise questions as to the jurisdiction of power of the Court. I am not sure that they can even do that. The only thing that I am sure of is that they are in a position to raise a question as to the oppressiveness of the subpoenas.

If we are looking to the Rules, either Civil or Criminal, as a kind of guide as to how to proceed in this matter, clearly they have not complied with the Rules, either the Civil or the Criminal Rules, because in both sets of Rules where it is recognized that a subpoena may be quashed or attacked on the ground that it is oppressive, it is perfectly plain that the person attacking must make a showing to that effect, and that requires something substantial, not just their bare statement that there is something oppressive.

Furthermore—and again I am not going to be technical —I am almost positive, your Honor, that upon discussion with counsel representing these parties, it would be very easy to arrive at a limitation which would be practical, which would achieve the objectives and which would completely eliminate any matter of oppressiveness.

[fol. 101] For example, let us assume that in some of these accounts there were a great many transactions involving checks for small sums of money. Obviously, we have no interest in prying into transactions of that sort. And I am sure that an understanding could be arrived at which would limit the examination of transactions to those exceeding a certain figure. And from what I know of the banks records and from the inquiries that I have made of one of the banks, I feel quite sure this must be true, and an entirely proper limitation of that kind would, I believe, really eliminate any serious suggestion of oppressiveness that there might be.

So by making the point that there has been a failure on the part of these parties to comply with the burden imposed upon them by the Rules to make a positive showing of oppressiveness, I do not mean that I am going to be technical and stand on my rights. I am perfectly willing to and indeed have contemplated all along that we can, in the light of the situation that may be found with respect to particular accounts, work out a feasible limitation which make compliance not oppressive at all.

Now, I have sketched the position of the defendant, what I believe to be the limitations upon the defendant, and the position of the other objectors and what I believe to be the limitations upon them. I now want to address myself [fol. 102] to the basic question of this court's power, a question which indeed I think was decided by the Chief Judge.

In discussing that, I want to make our position quite clear. As pointed out in the motion filed on behalf of the three banks, it has been decided over and again that an extradition proceeding is not a criminal proceeding. Indeed it is a proceeding civil in nature. It is for that reason—and there seems to be an echo of agreement in the motions filed on behalf of the three banks—that at the outset we took the position from which we do not retreat, to which we adhere, that the Civil Rules are, in fact, applicable and that this matter could and properly would be handled by notice of deposition.

The Chief Judge disagreed with that view. Leaving aside the terms of his order of November 13th and coming

to the superseding order which is dated November 23rd, I take it that the Chief Judge's view was not necessarily that the Civil Rules did not apply or that the Criminal Rules do apply; but rather that the source of power is the Treaty; and that the extradition court has a rather broad discretion to proceed in a manner that appears to it to be appropriate. That view makes very good sense.

And I am not sure that I would be disposed, even though I might feel that the Civil Rules really do apply and that [fol. 103] we are right in our original position, as a practical matter I would be disposed to argue against that view; because what we are trying to do is achieve an objective.

I feel that the discretion of the extradition court will be wisely exercised. And it may well be that there is some particular provision of the Civil Rules that would seem to be inappropriate or some provision of the procedure under the Criminal Rules that might seem to be more appropriate and that the extradition court in its discretion would want to follow one course rather than the other.

I am not sure that I would ever want, as a practical matter, to argue against that point of view. Furthermore, there is this to be said—and I come back to what I say was in Mr. Walters' mind when he originally objected to the application of the Civil Rules. That is the question of whether the defendant has a right to be confronted by the witnesses.

In an ordinary criminal proceeding there is this right of confrontation. It may be that there is some problem with respect to the taking of depositions as the Civil Rules contemplate in ordinary cases with respect to the matter of confrontation.

I may say, however, that I do not for a moment admit that the right to confrontation does exist in an extradition [fol. 104] proceeding. But I can see perfectly good sense in pursuing a course that avoids unnecessarily raising that question, because I was thinking of achieving a practical end in a way.

Also, it is always wise to decide not more than is necessary or to anticipate matters that might arise in the future. It struck me that the course which was worked out after this colloquy with your Honor in court and consultation

between Mr. Walters and me and ultimately adopted by your Honor in chambers with Mr. Walters and me present, regardless of what was the particular source of power or regardless of the force of the Civil Rules or the Criminal Rules or whatnot, under any view of the matter, what was done was within the Court's power and appropriate. And I certainly didn't care which view at that time was adopted as the rationalization or the basis of the Court's power, because as we all made very clear at the moment, the only problem was to look at the record and then determine where we go from there.

Now, let me come to the matter of the Court's power.

The Court: This might be a good point to suspend for the noon recess.

Mr. Westwood: Very well.

Mr. Walters: I would like to just say a word with re- [fol. 105] gard to that prior to the recess, if I could, so that we will have a clear picture of the factual situation.

The Court: Yes, you may, of course; but even assuming arguendo that the defendant might have waived, the other moving party did not waive any rights they had to challenge the power of the Court within the limits of privilege for the production of documents.

Mr. Walters: I thought I made it clear throughout these proceedings that I had no intention of stipulating to anything.

The Court: I so understood.

Mr. Walters: As a matter of fact, when Mr. Westwood came to my office with the subpoena, there was a place for my name in the form of the stipulation, and I said at that time that I did not want my name or would not sign it as any form of stipulation or even agreement as to the form of proceedings. There is only one time to attack a subpoena, and that is at a time subsequent to its issue, in the form of a motion to quash. I thought I made it clear that I made no waiver. I just wanted to bring that into the record as a factual situation that should be considered.

Mr. Westwood: That is quite true. We had on the form of subpoena, as I took it to Mr. Walters' office, a line which would indicate, I think, no objection as to form. Mr.

[fol. 106] Walters did not want his name to appear lest it be misunderstood.

I don't want to take any unfair advantage or to be fostering any misapprehension in reading from a transcript as to what Mr. Walters said in open court. I thought that he did state his position on that particular issue.

The Court: Well, I would rule that there was no waiver by the defendant on the right to challenge the power of the Court, to compel the production of documents. Of course, I have just stated that the other moving parties had certainly not waived the right to challenge.

Mr. Westwood: I might add one word. I made two points regarding it. Not only the waiver as to power, which your Honor has said you would rule against me on that, but also a waiver as to the scope of the subpoena or question as to whether it was too broad. I say that the time to attack that was when we were before your Honor previously.

The Court: We will recess until 2 o'clock.

(Whereupon, the hearing in the above-styled matter recessed until 2 o'clock of the same day.)

[fol. 107] Afternoon Session

2:15 o'clock p.m.

Thereupon— The following proceedings were had:

The Court: No. 9425, Aristeguieta against Jimenez. Is the defendant present?

Mr. Walters: Yes, sir.

The Court: You may proceed.

Mr. Westwood: I was about to address myself, your Honor, at the recess to the basic questions of power. I would like to say just one word of background in that connection. It should be kept in mind that throughout our position is that the Federal Civil Rules do apply. Indeed, as your Honor doubtless recalls, by express provision in Rule 54 of the Criminal Rules, it is stated that they do not apply, the Criminal Rules do not apply to extradition. But even though—

The Court: I don't have them here before me. Is it said they do not apply or they do not govern?

Mr. Westwood: These rules are not applicable to extradition and rendition of fugitives. That's in Rule 54-D.

The Court: Well, my own view is that in a proceeding such as this, the Court is entitled to resort to any power or process it may have to compel the production of evi- [fol. 108] dence within the limits, of course, of privilege.

Mr. Westwood: Yes.

The Court: It doesn't matter what Rule or what Statute or what procedures it adopts. It can adopt any procedure, I take it, not in contravention of the particular statute governing these procedures or the Treaty, and exercising the power that it may have to compel the production of evidence. So I don't think we need to look to any particular set of rules if we can find it anywhere. It seems to me that the Court is duty bound to exercise it, and certainly may exercise it to compel the production of evidence for either side.

Mr. Westwood: Yes.

Well, your Honor, that eliminates a considerable amount that I might otherwise have said.

The Court: I thought it might save you some time. Of course, if that notion of mine is greatly shattered by any replies that may be made, you may wish to reply to it.

Mr. Westwood: Yes, your Honor, and I am prepared to deal somewhat thoroughly with that point.

I think, then, I need only say, in view of some of the suggestions in some of the moving papers, that as we see the matter, the Treaty contemplates quite plainly that some procedure such as was adopted in this instance is [fol. 109] appropriate, and I would particularly invite your Honor's attention to two provisions of Article 11 of the Treaty, one of which we referred to on November 23rd, which provides in the second sentence in the second paragraph of that Article provision that the judicial functionaries of each of the States shall prescribe the procedures to be followed, which as we see it is quite extensive power to the Court, the judicial agencies of the two Nations, to determine—

The Court: You are speaking of the contracting—

Mr. Westwood: Yes, your Honor, the Nations. And the last clause of the last sentence of Article 11 of the Treaty contemplates that there shall be introduced on behalf of, or that the demanding State or demanding Nation is privileged to introduce not only the warrant of arrest and the depositions or evidence which were taken by the demanding Nation in support of the warrant of arrest, but also specifically provides for the receipt of other evidence. So that it is very clear, as we see it, and under that last sentence in Article 11, it is, of course, contemplated that there may be presented on behalf of the demanding Nation evidence in addition to the evidence which it may have or which its agencies may have had before them at the time the warrant of arrest or request for extradition was determined upon.

I think I need not labor the point that, by the very nature of extradition, and oftentimes the need to act with [fol. 110] some speed in so far as the proceedings within the demanding Nation are concerned, it would be not unnatural that by the time the hearing is to be held in the Nation of asylum, there would be other evidence that would have become available or that would be secured which would be deemed by the demanding Nation to be relevant and appropriate in support of its demand; and as far as the Treaty or the Statutes thereunder contemplating the receipt of evidence secured in this country is concerned, there is no suggestion that I have been able to find anywhere that the demanding Nation is not privileged to seek evidence within the Nation of Asylum.

In fact, in one recent—

The Court: You wouldn't need to spend any time on that point, as far as I am concerned. My own tentative view is that no matter where the evidence is or when it arises, if it supports or gives support to a finding or is relevant to that issue, it would be proper to marshal it to wherever it could be marshaled.

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STATEMENT ON BEHALF OF THE THREE BANKS BY MR. HUMKEY

Mr. Humkey: If your Honor please, I appear in behalf of the three banks—the First National City Bank of New

York, the French-American Banking Corporation and the [fol. 111] Royal Bank of Canada.

The Court: You are Mr. Humkey?

Mr. Humkey: Yes, sir.

If I may at this time, I would like to have leave of the Court to file an affidavit by Mr. D. Noyer of the French-American Banking Corporation in support of the third ground of the motion being asserted by the bank. I will hand a copy of this to Mr. Westwood and Mr. Ward.

I would also like to have leave of the Court to file in behalf of the Royal Bank of Canada an affidavit of Mr. John C. Oram, O-r-a-m. I don't have an affidavit yet from the First National City Bank because I haven't been in the matter long enough to physically obtain it from New York yet, but as soon as we do, I would like leave of the Court to file that also and serve copies of that on opposing counsel.

Now, your Honor, about everything that I had to say to you this morning or this afternoon has already been said, I think. The three banks present three grounds in support of the motion to quash. The first is, of course, upon the ground that this is a matter Civil in nature and that the Civil Rules of Procedure would apply.

The Criminal Rules of Procedure are expressly excluded from application by their own terms, and that under our first ground we state that from Section 11 of the Treaty [fol. 112] nor from Section 3184 of Title 18, do we find that there is any provision which would empower the Court to issue a subpoena, the nature of which has been issued in this case, and since this is a proceeding Civil in nature, that 45 E-1 of the Civil Rules of Civil procedure relating to subpoenas which simply apply to exclude the obligation of these banks to respond here in Florida by way of producing the documents which have been sought by the subpoena duces tecum.

I think your Honor has covered that actually in the remarks that you had with Mr. Westwood, so I don't see any necessity for me going into any detail with reference to that.

Our third ground, of course, relates to the oppression and burdensomeness of the requirements of this subpoena,

and the affidavit which I have supplied I think adequately takes care of the reasons why we feel that that ground has some merit. So with that brief statement, I see no reason why I should consume more of the Court's time.

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COLLOQUY

Mr. Westwood: Your Honor, the matter of limitation as to amount, as your Honor has suggested, was a question which originally we certainly had very much in the [fol. 113] forefront of our minds as something that could be talked out.

The problem arises, of course, because the number of transactions might be enormously multiplied by some amount by trying to cover small amounts. I cannot be sure because, of course, I haven't been able to go into it with all of the banks. But from such inquiries that I have been able to make, it would indicate some amount such as $250 or $300 or $400—in that area—below which inquiry would not be made, and would very greatly simplify the matter and very considerably alleviate the burden.

We would be perfectly ready and indeed have had in mind all along that with the banks we would pick out some such amount, and if it were desirable to specify the amount here, we would suggest an amount of $250 with the understanding that we would in good faith seek to discuss with the banks in any particular case to increase that figure if it appeared that there was some problem that we don't anticipate which would not have been solved by fixing the figure at that amount.

Now, the second point—

The Court: $250?

Mr. Westwood: Yes.

The Court: How much is it charged that the defendant converted to his own use?

Mr. Westwood: There are millions. That is true.

[fol. 114] The Court: About how much in American money?

Mr. Westwood: Well, it would be, as far as the Complaint states, many millions of dollars. It is obvious that it does run into the many millions.

The Court: How many are "many"?

Mr. Westwood: I don't know, your Honor, just how many it would be, whether it would be ten or twelve or fifteen. I just can't tell at this point.

Of course, the problem that we have here is that of seeking to trace some very considerable number of transactions which, over a period of time, can be broken up into relatively small amounts.

The Court: Is it the theory of the plaintiff that these moneys were funneled out of the country in small amounts to various people, various of these people that are named?

Mr. Westwood: That's right. The people named in the subpoenas were closely associated with the defendant. The banks in this country were used in connection with the transactions in which they were engaged. Moneys were sent to those banks in various ways, sometimes directly and sometimes indirectly, via banks in other countries.

As I say, I've picked that figure indicated because I believe it very much simplifies the problem in terms of [fol. 115] number of transactions.

I made inquiry in one case with respect to the matter; and I don't want to testify or to hold those people to what they told me. But it is fair to say that it was indicated that a figure of that nature below which no inquiry will be made would very greatly simplify the matter and very considerably alleviate the mechanical burden of checking through microfilms and so on.

The Court: Does that apply both to deposits and withdrawals?

Mr. Westwood: Yes, sir; because the transactions would be both ways. Sometimes money would be coming in, and other times money would be going out. That would apply to both.

The Court: Is it your theory that this money was withdrawn from various places for the benefit of the defendant?

Mr. Westwood: Yes. Money would be withdrawn from one place and deposited to the account of the defendant in another, at another time and at another bank.

The Court: You expect to show by these bank records, I take it, that the source of these funds, geographically speaking, was Venezuela?

[fol. 116] Mr. Westwood: That's right. Of course, what is necessary in a matter of this kind is to indicate probable cause as to the existence of the kind of a pattern that is alleged in the Complaint. It is a difficult thing, and I am the first to agree. But in the case of crimes of this nature, if for the moment we may indulge in the presumption that a crime could have been committed, in the case of crimes of this nature, as the courts have recognized, they are not sharply recorded by those who commit them. But concealment through the various devices is, of course, a common thing and is one of the problems which the person who has the burden of proof has to cope with.

The Court: None of these conversions or malversations of funds are deemed by the Federal Court of Venezuela to be political crimes?

Mr. Westwood: No, your Honor. They are quite clear on that point.

The Court: The matter of time has also been referred to. You say this overlapping and bringing of the investigation up to date, within the allegations, covers a ten-year period from 1948 to 1958?

Mr. Westwood: Yes. That was a problem that puzzled me as to how to deal with it in this sense. Obviously steps were taken to conceal obvious evidence as to what was [fol. 117] done with the fruits of the crime after the occurrence of the crimes; and that is often quite relevant to the question of whether the crime was committed. Indeed, in many financial crimes of this general nature, there is considerable evidence as to what occurred after the occurrence of the crime with respect to the disposition of funds and so forth.

The Court: When is this defendant alleged to have come to this country?

Mr. Westwood: I don't know. There is an allegation as to when he came here. My recollection is—

Mr. Walters: I can furnish the Court with that information. He departed on January 23rd from Venezuela to the Dominican Republic and arrived here in March.

The Court: Of what year?

Mr. Walters: 1958.

Mr. Westwood: 1959. He left Venezuela in January, 1958 and arrived in this country in March, 1958.

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On October 21, 1959 and December 14, 1959 (Re-Filed) English Translation of Record of Extradition of General (R.) Marcos Perez Jimenez Was Filed, the Designated Portions of Which Are as Follows:

[fol. 118]

Request for Extradition

(Seal of the Federal Court)

The Republic of Venezuela

in its name

The Federal Court

Roger Hernandez R., Clerk of the Federal Court of the Republic of Venezuela, hereby certifies: that the documents contained herein are true copies of those contained in the record of proceedings resulting from the charges brought by the Attorney General against General Marcos Perez Jimenez (Ret.), former President of the Republic of Venezuela:

Whereas the Court, having considered the written charges, Annex No. 1 hereto, presented in the hearing of July 23, 1959, by the Attorney General against General Marcos Perez Jimenez (Ret.), former President of the Republic, determined, after studying the accompanying documents, by judicial decree dated on the 30th day of the same month and year, and after carrying out the summary proceeding provided for by Article 7 (section 16) of the Organic Law of the Federal Court, and article 362 of the Code of Criminal Procedure, that there is reason for the institution of a prosecution (Annex No. 2);

Whereas, as a result of the foregoing, the Court issued [fol. 119] on the 12th day of this month a warrant of arrest with due cause against the accused, General Marcos Perez Jimenez, based upon articles 407, 177, 181, 185, 415, 416 and 417 of the Penal Code, read together with article 84

of the same; articles 195, 196, 198, 199 and 205 of the same Code, and article 182 of the Code of Criminal Procedure (Annex No. 3);

Whereas, the accused, Marcos Perez Jimenez, is not within the country, and the Court has positive information and it is widely known that he is within the territory of the United States of America and has his residence in the City of Miami, State of Florida, of that country;

Therefore, the Federal Court, according to the provisions of articles 389 and 390 of the Code of Criminal Procedure, determines that the extradition of the accused, Marcos Perez Jimenez, should be requested from the Government of the United States of America and, for the purpose of furnishing all pertinent facts to the National Executive Authority, so that the necessary request may be made, deems it relevant to make the following preliminary statement:

A) *Facts on which the warrant of arrest is based.*

From the study made by the Court and from the particulars on which the warrant of arrest is based, issued on August 12, 1959, it appears:

[fol. 120] CRIMES AGAINST PERSONS

a) That between the accused, Perez Jimenez, and the officials of the defunct Seguridad Nacional, there was an agreement and connivance from which the participation of the accused is traced, as co-perpetrator of and accessory to the various criminal acts mentioned in the said warrant of arrest, and for which criminal proceedings are pending in the courts of the Republic. Accordingly, the said warrant of arrest states: Among the facts showing the close connection of the accused to the criminal acts specified below, the statements made by Mr. Segundo Hermogenes Espinoza should be mentioned, which appear on pages 77 and 78 et seq., from the record relating to the murder of Dr. Leonardo Ruiz Pineda, a certified copy of which is annexed to this record identified by the letter "L".

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b) It is stated in the warrant of arrest that, "based on this close connection, the record contains well founded and grave indications that the accused, who engineered everything in the Seguridad Nacional, participated in the crimes committed by it, especially in the commission of the murders of Drs. Leonardo Ruiz Pineda, German Gonzalez and Antonio Pinto Salinas, and of Mr. Luis Hurtado Higuera." [fol. 121] To that effect, the statements and proceedings relating to the murders of said citizens, by virtue of which the warrant of arrest was issued, are attached as Annex No. 6.

c) It is also stated in the warrant of arrest that "from the documents annexed by the Attorney General to his statement of charges, grave and well founded indications appear of the defendant's guilt, which identify him as a participant in the imprisonments, deportations, deprivations of liberty in concentration camps, kidnappings, tortures, defamations, forcible entries and personal injuries perpetrated by the said former functionaries of the defunct Seguridad Nacional, and carried out by them throughout the country"; these acts constituting common crimes contemplated by articles 177, 181, 185, 415, 416 and 417 of the Penal Code, read together with article 84 of the same.

Concerning these facts, a certified copy of the judgment of the First Superior Penal Court of the Jurisdiction of the Federal District and the State of Miranda, dated December 22, 1958, is attached hereto as Annex No. 7, wherein appear statements and proceedings regarding the said crimes.

Crimes Against Property

It is stated in the warrant of arrest that, on March 14, 1949, before the First Civil Court of First Instance of the [fol. 122] Federal District, the accused, Perez Jimenez, declared, as the property of himself and of his wife, Flor Chalbaud de Perez Jimenez, assets with a total value of one hundred and thirteen thousand bolivares (Bs. 113,000.00) (Annex No. 8), later increased by one million two hundred and eighty-three thousand two hundred and thirty-two bolivares and 15 centimos (Bs. 1,283,232.15), received

by him as salaries drawn for official duties performed from November 25, 1948 to January 22, 1958, without estimating deductions for living expenses (Annex No. 9); and later increased, according to the particulars contained in the record, as appears below:

a) By forty million, three hundred and forty thousand, five hundred and ninety-four bolivares and 72 centimos (Bs. 40,340,594.72), equivalent to the amount of twelve million, forty one thousand, nine hundred sixty-eight dollars and 57 cents ($12,041,968.57), a sum which was deposited in various amounts in bank accounts which the accused kept in foreign countries, as is proven by the various vouchers contained in the record as Annex No. 10.

b) It is shown in the warrant of arrest that "there also appears in the assets of the accused the amount of seventeen million, two hundred and eighty one thousand bolivares (Bs. 17,281,000.00), consisting of securities and equities in corporations, which were impounded by the Attorney Gen- [fol. 123] eral, as set forth in the proceedings of the Civil Court of First Instance of this jurisdiction, the 39 pages of which are included in the record as Annex 'C'." The proceedings referred to are contained in this record as Annex No. 11.

With reference to the said assets, the warrant of arrest indicates that they were found in a valise that the accused left behind at his residence, El Paraiso, in this city, the night he fled the country, January 23, 1958. Concerning this valise, it should be noted that the following cable appears in the record as Annex No. 12: "VZ DR 330/HE 212 CIUDAD-TRUJILLO RD 24 23 1850 LIEUT. VINICIO PLAZA, AVENIDA EL EJERCITO CALLE SANABRIA QUINTA LOURDES EL PARAISO CARACAS. DESIRE REPORT ON VALISE REPLY TO THIS CITY FLOR DE PEREZ JIMENEZ". There also appears in the record a letter from the accused, Perez Jimenez, as Annex No. 13, reading as follows: "Marcos Perez Jimenez, Miami Beach, October 24, 1958. Mr. Diogenes Peña, Consul General of Venezuela, Miami, Florida. Mr. Consul: I am writing to advise, through your good offices, whomever it may concern in Venezuela, regarding a matter of my personal interest.

When I left the country early in the morning of January 23rd of this year, a valise was left behind containing negotiable valuables and various papers. I made this fact known in due course to the members of the Government Junta. As I have learned that part of these negotiable valuables [fol. 124] are not included in the list of my impounded properties, I wish to place the matter on record. The valuables I refer to are the following: About three million bolivares (Bs. 3,000,000) in bonds of the Centro Simon Bolivar (the list of these bonds was also in the said valise); about one hundred thousand dollars in bills ($100,000.00) and about three hundred thousand bolivares (Bs. 300,000) in bills of five hundred, one hundred, fifty, twenty and ten bolivares. I wish to make this statement because so long as these valuables are not returned to their legitimate owner, who is the writer, they should remain in the possession of the Venezuelan nation and not in the hands of third persons, which would simply and plainly be an act punishable by the normal laws of any country. I shall be thankful for the attention you may give this letter. (Signed) Marcos Perez Jimenez."

c) It is stated in the warrant of arrest that, "similarly, it appears in the record that the accused is the owner, personally and through intermediaries declared as such by the Attorney General under authority vested in him by Decree No. 28 of February 6, 1958 issued by the Government Junta of the Republic of Venezuela, of numerous personal properties and real estate, specified in the report for the years 1957-58 submitted by the Attorney General to the National Congress, of which a copy is contained in the record iden- [fol. 125] tified by the letter 'B'." Among these properties appear:

1. Three houses and three lots, in the name of the accused, which form a single property and constituted his residence and that of his family located in El Paraiso in this city;

2. Four lots of more than twenty eight thousand square meters (M2. 28,000) located in the developments of Santa Monica, Los Chaguaramos, and Colinas de Bello Monte, in this city, on which buildings were constructed especially

for the presidential residence and its guard; this real estate is in the name of the wife of the accused, Flor Chalbaud de Perez Jimenez;

3. Eight parcels of land, also in the name of the said wife, with an area of eight thousand four hundred and forty two square meters and 15 square centimeters (M2. 8,442.15) located in the Playa Grande development, Maiquetia Parish, Vargas Department, Federal District;

4. Nine parcels of land of more than fifteen thousand square meters (M2. 15,000) located in the Caraballeda development, also in the Vargas Department, Federal District, which are in the name of the wife of the accused;

5. Twelve lots of one hundred and six thousand three hundred and twelve square meters (M2. 106,312), in the name of the same woman, located at El Peñon, Baruta [fol. 126] Township, Sucre District, State of Miranda, which form a single fully developed property, with special buildings for the eventual residence of the accused and his family;

6. A parcel of land of forty-two thousand two hundred and fifty square meters (M2. 42,250), located at the place called "Lagunetica", within the Guaicaipuro District of the said State of Miranda, which also stands in the name of the wife of the accused;

7. There also appears among the assets of the accused the "La Francia" building, of ten stories, and its land, located on Las Monjas corner in this city of Caracas; which real estate stands in the name of Fortunato Herrera, who was legally declared an intermediary of the accused;

8. Likewise, there appears as a property of the defendant, standing in the name of the company called "Polinversiones, C.A.", similarly declared an intermediary of the accused, the land known as "Carbonero", consisting of more than three thousand five hundred hectares (Hect. 3,500), located within Veroes Township, San Felipe District, State of Yaracuy, purchased for four hundred thousand bolivares (Bs. 400,000.00). With regard to this property, there appears in the Attorney General's report, identified as "D-1",

a photostatic copy of the document executed by Fortunato Herrera, in his capacity as Managing Director of "Polin- [fol. 127] versiones, C.A.", in which he states that this purchase was made "for the exclusive benefit of General Marcos Perez Jimenez, because it was by him and the seller that all the essential elements of the transaction were satisfied, pertaining to this property." A like statement made by the same company, appears regarding the rural properties known as "Chuao" and "Cepe", located within the Mariño District, State of Aragua, as per document also in the record;

9. The Paris Building of ten stories, located between the Alcabala and La Cruz corners in this city, which also stands in the name of said company, "Polinversiones, C.A.", likewise appears as the property of the accused.

10. Among the properties of the accused there is also "La Majada" ranch with its furnishings and livestock, which also stands in the name of the said Fortunato Herrera.

In addition to the properties described above, there are many other personal properties, stocks, real estate, estates and ranches located in the Federal District and various states of the Republic, all owned by the accused, as specified in the list in Annex "K", set forth on pages 123 to 132 of the report submitted to the National Congress by the Attorney General. There is attached to the present record, as Annex No. 14, a certified copy of the said list.

d) The record also contains statements in the hand of [fol. 128] the accused, Perez Jimenez, verified by handwriting experts, which were contained in the charges of the Attorney General, identified with the letter "E", that the accused had in his private safe the following amounts of money on the dates indicated: On 7-16-51, Bs. 2,000,509.75; on 9-12-51, Bs. 2,565,209.75; on 10-29-51, Bs. 1,847,509.75; on 12-30-51, Bs. 2,902,589.25; on 1-21-52, Bs. 2,612,589.25. Data relating to these amounts are contained in Annex No. 15.

e) It likewise appears in the record that through the said "Edificio Washington C.A.", the accused and General

(R.) Luis Felipe Llovera Paez deposited in the Banco Union in this city in December, 1957, the sum of Six Million Bolivares (Bs. 6,000,000), which was intended for the purchase of stock in the Colonial Trust Company of New York, this amount being subsequently withdrawn from the said bank on January 9, 1958, as indicated in the data contained in this record as Annex No. 16.

f) It also appears in the warrant of arrest that the accused, abusing his position as a public official, obtained for himself, from various persons, sums of money as percentages or commissions from the purchase of armaments, tanks, ships, airplanes and other material purchased as the property of the Venezuelan nation, as shown in writings, photostatic copies of which are annexed as Annex "F" to the charges preferred by the Attorney General, which are [fol. 129] attached to this record as Annex 17.

With reference to these commissions, collected by the accused to the injury of the public treasury, special mention should be made of those shown by the following matter, which is part of the statements referred to in the annex last cited above:

1. Commission collected by "Polinversiones, C.A.", a company which was declared an intermediary of the accused, Perez Jimenez:

"D-7. COVELSA. Caracas, August 23, 1955.

"AGREEMENT

"Between: Doctor Timoleonte Gozzi L., holder of Identity Card No. 558224, Managing Director of COVELSA (Compania Venezolana de Electrificacion S.A.), Dr. Romero Bavera, holder of Identity Card No. 132289, Administrator-Manager of C.I.T.I.M., both duly authorized by their respective Boards of Directors and their principals:

"1) COVELSA for G.I.E. (Gruppo Industrie Electro-Meccaniche per Impianti all' Estero), Milan, Italy.

"2) C.I.T.I.M. for ANSALDO SAN GIORGIO, of Genoa, Italy, and the corporation, Polinversiones, C.A., have entered into the following contract: The representatives of said com-

panies, Doctor Timoleonte Gozzi L., and Doctor Romero Bavera, agree to a commission of TEN PER CENT (10%) to [fol. 130] Polinversiones, C.A., of the amount of the bid submitted on August 15th of this year to the Ministry of Development, for the supply of materials and equipment for the Hydro-Electric plant of Caroni-Macagua No. 1, for which bidding was invited on May 10, 1955. This ten per cent (10%) is understood to depend on what we have submitted to the Ministry of Development being selected. The specified commission of ten per cent (10%) will be paid in toto to Polinversiones, C.A. at the time when the Ministry of Development awards the contract to COVELSA, the bidding company.

"The Company Polinversiones, C.A., on its part, declares that from the specified commission of 10% there will also be paid in the same transaction, to COVELSA and C.I.T.I.M. jointly, the sum of one hundred thousand bolivares (Bs. 100,000) as fees for their services. (Sgd.) Doctor Timoleonte Gozzi L., Managing Director of COVELSA. (Sgd.) Doctor Romero Bavera, Administrator-Manager of C.I.T.I.M.—NOTE. Payment of the commission of ten per cent (10%) will be made by COVELSA exclusively and directly to Polinversiones, C.A."

2. Commissions specified in handwritten records of the accused, among which those received by him from transactions between the Nation and various companies are conspicuous, specified in the said Annex:

[fol. 131]

"TANKS	$ 601,800	258.774	you
		180.540	me
		120.360	successor
		42.126	Pulido
"ANSALDO	$1,567,500	785.000	you
		482.500	me
		300.000	successor

"BOATS	$ 340,359	170.175	you
		102.105	me
		68.070	successor
"VISCOUNT	$ 317,121	190.272	you
		126.848	me

"The transportation was settled and paid last February 25th: Bs. 260,879.05, equivalent to $78,500.00."

B) *Justification for Extradition under International Law.*

1. The United States of America and Venezuela have concluded, ratified and exchanged the Treaty of Extradition which was signed in Caracas on January 19, 1922 and which is in force.

2. The contracting governments agreed, according to Article I of the said Treaty "to deliver up to justice, by means of requisition duly made as herein provided, any person who may be charged with or may have been con- [fol. 132] victed of any of the crimes committed within the jurisdiction of one of the Contracting Parties and specified in Article II" * of the said Convention.

3. The crimes referred to in Article II of said Treaty and which constitute cause for extradition applicable in the present case are the following:

* * * * * * *

* The translation of these quotations has been copied from the English version of the Treaty text appearing in 43 Stat. 1698 et seq.

[fol. 169]

REPUBLIC OF VENEZUELA

FEDERAL COURT

CARACAS

ANNEX NUMBER TEN

(No. 10)

[fol. 170] MONEY SENT ABROAD BY GENERAL (R) MARCOS PEREZ JIMENEZ, MR. FORTUNATO HERRERA AND "POLINVERSIONES, C.A.", ACCORDING TO DATA COMPILED TO 6-15-58 BY THE OFFICE OF THE ATTORNEY GENERAL.

Gen. (R) Marcos Perez Jimenez

2- 5-51	Deposited by Dr. Napoleon Dupouy to the checking account of Gen. Marcos Perez Jimenez in the National City Bank of New York, in New York	$	150,000.00	Bs.	502,500.00
2-28-51	Deposited by Dr. Napoleon Dupouy to the checking account of Gen. Marcos Perez Jimenez in the National City Bank of New York, in New York	$	430.73	"	1,442.95
10-11-51	Deposited by Dr. Napoleon Dupouy to the checking account of Gen. Marcos Perez Jimenez in the National City Bank of New York, in New York	$	100,000.00	"	335,000.00
12- 3-51	Deposited by Dr. Napoleon Dupouy to the checking account of Gen. Marcos Perez Jimenez in the National City Bank of New York, in New York	$	100,000.00	"	335,000.00

2-21-52	His deposits to this date with the First National City Bank of New York, in New York	$ 350,430.73	Bs.	1,173,942.95
[fol. 171]				
7-10-53	Remitted to the First National City Bank of New York, in New York	$ 1,000,000.00	Bs.	3,350,000.00
2-15-54	Remitted to the First National City Bank of New York, in New York	$ 1,000,000.00	"	3,350,000.00
12- 7-54	Deposited by Dr. Napoleon Dupouy to the checking account of Gen. Marcos Perez Jimenez in the American Banking Corporation in New York ..	$ 1,000,000.00	"	3,350,000.00
3-18-57	Remitted to the First National City Bank of New York, in New York	$ 300,000.00	"	1,005,000.00
3-22-57	Check No. 120180 drawn by Dr. Pedro A. Gutierrez Alfaro against Bank of London $(sic) South American, deposited to the checking account of the same Dr. Gutierrez Alfaro and/or Lola T. de Gutierrez in the First National City Bank of New York, in New York and transferred to Gen. Marcos Perez Jimenez	$ 300,000.00	"	1,005,000.00
3-27-57	Remitted to the First National City Bank of New York, in New York	$ 300,000.00	"	1,005,000.00

10- 1-57	Deposited by Dr. Silvio Gutierrez to the checking account of Gen. Marcos Perez Jimenez in the Union Bank of Switzerland, in Zurich, by check drawn against the Chemical Corn Exchange Bank of New York	$ 1,000,000.00	Bs.	3,350,000.00
[fol. 172]				
11-27-57	Deposited by Dr. Pedro A. Gutierrez Alfaro to the checking account of Gen. Marcos Perez Jimenez in the Hibernia Bank in New Orleans, for conversion to dollars	$ 447,761.19	"	1,500,000.00
	Sub-total: remitted abroad by Gen. (R) Marcos Perez Jimenez	$ 6,018,622.65	Bs.	20,262,885.90

Remittances of money made by the aforesaid citizen, on the dates and in the amounts specified, through The Royal Bank of Canada, in Caracas, to be deposited to his checking account in the New York Branch.

10- 9-53	$	27,703.68
10-24-53		26,809.95
10-30-53		23,830.85
11- 4-53		59,580.29
11- 6-53		29,791.16
11-17-53		29,791.16
12- 4-53		29,791.16
12-14-53		29,791.16
12-28-53		14,895.58
1-26-54		29,791.16

[fol. 173]

2-25-54		$	14,895.58		
3-17-54			14,895.58		
4-30-54			44,686.74		
5-12-54			44,686.56		
7- 8-54			29,791.16		
7-27-54			14,895.58		
9- 4-54			22,343.37		
10- 7-54			25,322.49		
11-10-54			44,686.74		
11-30-54			14,895.58		
12-15-54			14,895.58		
1- 8-55			29,791.16		
1-18-57			136,417.90		
1-10-58			298,507.46	Bs.	3,525,883.56
8-30-57	His deposits in checking account in the New York Branch of the Royal Bank of Canada, to this date ..	$	891,692.52	Bs.	2,987,169.94
9-30-57	His deposits in checking account in the First National City Bank of New York, in New York, to this date		581,821.40	"	1,949,101.69
	Sub-total: Remitted abroad by Mr. Fortunato Herrera		2,526,001.55	"	8,462,105.19

[fol. 174]

Polinversiones, C.A.

4-11/ 5-16-57	National Bonds and their respective interest coupons, endorsed by Fortunato Herrera, Director General of "Polinversiones, C.A.", to the order of The Royal Bank of Canada, in Caracas, to be sent to its New York Branch and returned before maturity to the Caracas Branch, collected by the latter and the proceeds remitted to the New York Branch ..	$ 2,403,629.26	Bs.	8,052,158.01
10- 7-57	Amount remitted to this date to the New York Branch of The Royal Bank of Canada	1,063,715.11	"	3,563,445.62
	Sub-total: Remitted abroad by Polinversiones, C.A.	3,467,344.37	"	11,615,603.63
	OVERALL TOTAL:	12,041,968.57	"	40,340,594.72

Note: According to records in the handwriting of the former President himself, he had the following amounts of cash on the dates indicated:

1) As of 7-16-51	Bs.	2,000,509.75
2) As of 9-12-51	"	2,565,209.75
3) As of 10-29-51	"	1,847,509.75
4) As of 12-30-51	"	2,902,589.25
5) As of 2-21-52	"	2,612,589.25

[fol. 175]

DEPOSITED WITH
THE NATIONAL CITY BANK OF NEW YORK
FOR CREDIT TO THE ACCOUNT OF

Marcos Perez Jimenez
(Please Print Full Title)

ADDRESS Venezuela

DATE Feb. 5 1951

	DOLLARS	CENTS
BILLS		
COIN		
CHECKS WHERE PAYABLE (LIST SEPARATELY)	$150,000	—
duplicate (illeg.) deposited by Napoleon Dupouy (Initials illeg.)		
TOTAL	$150,000	—

(SEAL)

[fol. 176]

DEPOSITED WITH
THE NATIONAL CITY BANK OF NEW YORK
FOR CREDIT TO THE ACCOUNT OF

Marcos Perez Jimenez
(Please Print Full Title)

ADDRESS Venezuela

DATE 10/11 1951

	DOLLARS	CENTS
BILLS		
COIN		
CHECKS WHERE PAYABLE (LIST SEPARATELY)	$100,000	—

duplicate
deposited by Napoleon Dupouy
(Initials illeg.)

(SEAL)

TOTAL:	$100,000	—

[fol. 177]

DEPOSITED WITH
THE NATIONAL CITY BANK OF NEW YORK
FOR CREDIT TO THE ACCOUNT OF

Marcos Perez Jimenez
(Please Print Full Title)

ADDRESS Venezuela

DATE Dec. 3 1951

	DOLLARS	CENTS
BILLS		
COIN		
CHECKS WHERE PAYABLE (LIST SEPARATELY)	40,000	—
	28,000	—
	32,000	—

—10—

duplicate
deposited by

Napoleon Dupouy

(SEAL)

TOTAL	100,000	—

[fol. 178]

DEPOSITED WITH
THE NATIONAL CITY BANK OF NEW YORK
FOR CREDIT TO THE ACCOUNT OF

Marcos Perez Jimenez

(Please Print Full Title)

ADDRESS Caracas, Ven.

DATE 2/15 1952

	DOLLARS	CENTS
BILLS		
COIN		
CHECKS WHERE PAYABLE (LIST SEPARATELY)	$1,000,000	—
		—11—
		(SEAL)
TOTAL	$1,000,000	—

[fol. 179]

(SEAL)

THE NATIONAL CITY BANK OF NEW YORK
ESTABLISHED 1812

Trust Affiliate
City Bank Farmers Trust Company

VIA AIR MAIL 55 Wall Street, New York 15, N. Y.

Cable Address "CITIBANK" July 10, 1953

FB 1

Mr. Marcos Perez Jimenez
Caracas
Venezuela

Dear Mr. Jimenez:

Pursuant to your request of July 7, 1953, we hereby certify that the balance in your Demand Account carried at our Head Office, Overseas Division, 55 Wall Street, New York City, close of business July 10, 1953, was $1,350,430.73.

Very truly yours,

(signature illegible)

Assistant Cashier

(COURT SEAL)

[fol. 180]

THE NATIONAL CITY BANK OF NEW YORK
ESTABLISHED 1812

Trust Affiliate
City Bank Farmers Trust Company
55 Wall Street, New York 15, N. Y.

VIA AIR MAIL

Cable Address "CITIBANK"

October 27, 1954

Mr. Marcos Perez Jimenez
Caracas, Venezuela

Dear Mr. Perez Jimenez:

Pursuant to your request of October 20, 1954, we hereby certify that the balance in your Demand Account carried at our Head Office, Overseas Division, 55 Wall Street, New York City, close of business October 26, 1954 was $2,090,785.73.

Very truly yours,

/s/ J. E. Wheeler

J. E. Wheeler
Assistant Vice President

(COURT SEAL)

[fol. 181]

In Account With
THE FIRST NATIONAL CITY BANK OF NEW YORK
55 Wall Street, New York 15, N. Y.

R. MARCOS PEREZ JIMENEZ

—14—

VENEZUELA (COURT SEAL)

DESCRIPTION	DEBIT	CREDIT	DATE			BALANCE
BALANCE BROUGHT FORWARD			52'	FEB	21	350,430.73
		1000,000.00	53'	JUL	10	1,350,430.73•
		1000,000.00	54'	FEB	15	2,350,430.73•
	259,645.00		54'	SEP	8	2,090,785.73•
	1102,105.00		56'	MAY	14	988,680.73•
		300,000.00	57'	MAR	18	1,288,680.73•
		300,000.00	57'	MAR	27	1,588,680.73•

LAST AMOUNT ABOVE IS
YOUR FINAL BALANCE

[fol. 182]

FRENCH AMERICAN BANKING CORPORATION

—15—

31 NASSAU STREET

NEW YORK 5, N.Y.

CREDIT ADVICE

(COURT SEAL) DATE 12/7/54

WE CREDIT your account with the following under usual reserve:

	VALUE	AMOUNT
REMITTANCE RECEIVED FROM		
DR. NAPOLEON DUPOUY		$1,000,000.00

MAIL TO

MARCOS PEREZ JIMENEZ
C/O AUDITING DEPARTMENT
F.A.B.C. NEW YORK

VERY TRULY YOURS,
FRENCH AMERICAN BANKING CORPORATION

(Signature illegible.)

On items credited without usual reserve, as well as on all others, the FABC declines responsibility as to the genuineness of prior endorsements and maintains the right of full recourse in case of irregularities in the same.

[fol. 183]

—16—

FRENCH AMERICAN BANKING CORPORATION

31 NASSAU STREET

NEW YORK 5, N. Y.

Cable Address:
FRENAMBANK

December 7, 1954

Sr. Marcos Perez Jimenez,
c/o Auditing Department
French American Banking Corporation,
New York

Dear Sir:

We acknowledge receipt of your letter of December 1st 1954 and take pleasure in enclosing herewith our credit advice in the amount of $1,000,000.—received for your account from Mr. Napoleon Dupouy.

In accordance with your instructions, we have today credited the account of Banco Provincial de Venezuela, Caracas, on our books, with $1,000,000.—as a time deposit maturing December 7, 1955 and bearing interest at 6% per annum. Our advice relative thereto is enclosed.

We will credit your account monthly with the interest charged by us to Banco Provincial de Venezuela.

Good note has been taken of your other instructions.

Very truly yours,

(Signature illegible.)

President

(COURT SEAL)

JD/JTM
encls.

[fol. 184]

—32—

(COURT SEAL) (SEAL)

March 22, 1957

The First National City Bank of New York
55 Wall Street
New York, New York

Dear Sirs:

You are hereby authorized to charge the account of Pedro A. Gutierrez Alfaro and/or Lola T. de Gutierrez Alfaro in the amount of $300,000 (Three Hundred Thousand Dollars) and credit a like amount to the account of General Marcos Perez Jimenez once you have received for the credit of the aforementioned joint account the sum of $300,000. This amount is being remitted to you by means of a draft on the Bank of London and South America.

Very truly yours,

/s/ Pedro A. Gutierrez Alfaro
Pedro A. Gutierrez Alfaro

(Notation illegible.)

[fol. 185]

(COURT SEAL)

THE NATIONAL CITY BANK OF NEW YORK

ADVICE OF CREDIT

55 WALL STREET
NEW YORK 15, N. Y.
FOREIGN TELLERS

No. RM 538987

2/6/51

—40—

TO MR. MARCOS PEREZ JIMENEZ,
CARACAS, VENEZUELA

WE HAVE CREDITED YOUR ACCOUNT $150,000.00
VALUE

2/5

DEPOSITED BY

NAPOLEON DUPOUY

THE NATIONAL CITY BANK OF NEW YORK

(Signature illegible)

[fol. 186]

(COURT SEAL)

THE NATIONAL CITY BANK OF NEW YORK

ADVICE OF CREDIT

55 WALL STREET
NEW YORK 15, N. Y.
FOREIGN TELLERS

No. RM. 548082 2/28/51

—41—

TO MARCOS PEREZ JIMENEZ VEN
HOLD ALL MAIL

WE HAVE CREDITED YOUR ACCOUNT $430.73
VALUE

2/28

DEPOSITED BY

NAPOLEON DUPOUY

THE NATIONAL CITY BANK OF NEW YORK

(Signature illegible)

[fol. 187]

—50—

(COURT SEAL)

Receipt

We hereby certify having received from
His Excellency Silvio GUTIERREZ, Caracas,
US$ 1'000'000.—per check drawn on the Chemical Corn Exchange Bank, New York, order Swiss Bank Corporation, Zurich,

for collection and credit to the account of His Excellency President Marcos Perez Jimenez.

Zurich, 1st October, 1957.

UNION BANK OF SWITZERLAND

(Signature illegible)

[fol. 188]

—51—

(Translation of a Handwritten Note)

Today, June 24, 1952, I turned over to Dr. Napoleon Dupouy the amount of Bs 119,000.00

[fol. 189]

THE HIBERNIA NATIONAL BANK
IN NEW ORLEANS

—53—

November 27, 195..

WALLACE M. DAVIS
PRESIDENT

Excellency:

I take pleasure in advising you that Dr. Pedro A. Gutierrez Alfaro has deposited with us to your credit the sum of one million five hundred thousand bolivares.

Because of the difficulty of converting this sum into dollars without influencing the exchange rate on bolivares, which would, in our opinion, be bad for Venezuela as well as decreasing the amount of dollars available from this sum of bolivares for you, and after full discussion with Dr. Gutierrez, we have advised that this sum will be converted into dollars and deposited to your account over a period of several weeks. In this manner, the exchange rate will not be adversely influenced and you will be able to derive the greatest benefit from the sum which you have so graciously entrusted to us.

As of the moment, we are able to guarantee the figure of 29.57. If we cannot improve this conversion figure, all of your money will be converted and deposited to your account at this figure. If it is at all possible to do so, we will certainly exert every effort to work in your interest to improve this exchange.

[fol. 190] Appreciating the confidence you have expressed in us by establishing your account with us, and assuring you that we will do everything we can to assist in executing your desires, we are,

Respectfully yours,

/s/ Wallace M. Davis
Wallace M. Davis,
President.

(COURT SEAL)

His Excellency Marcos Perez Jimenez,
Caracas, Venezuela.

[fol. 191]

(COURT SEAL)

THE NATIONAL CITY BANK OF NEW YORK

—58—

ADVICE OF CREDIT
No. RM. 656690

55 WALL STREET
NEW YORK 15, N. Y.
FOREIGN TELLERS

10/11/51

TO MARCOS PEREZ JIMENEZ VEN

WE HAVE CREDITED YOUR ACCOUNT $100,000.00
VALUE

10/11

DEPOSITED BY

NAPOLEON DUPOUY

THE NATIONAL CITY BANK OF NEW YORK

(Signature illegible)

DW

[fol. 192]

(COURT SEAL)

—17—

FRENCH AMERICAN BANKING CORPORATION
ORIGINAL
DEBIT ADVICE

To: MARCO PEREZ JIMENEZ
c/o AUDITING DEPT.
F.A.B.C.

New York 12/8/54

WE DEBIT your account the following:

	Value	Amount
	12/7/54	
AMOUNT PAID TO BANCO PROVINCIAL DE VENEZUELA, CARACAS, PURSUANT TO YOUR LETTER OF 12/1/54.		$1,000,000.—

Respectfully,

FRENCH AMERICAN BANKING CORPORATION

[fol. 220]

REPUBLIC OF VENEZUELA

FEDERAL COURT

CARACAS

ANNEX NUMBER FIFTEEN

(No. 15)

[fol. 221] REPUBLIC OF VENEZUELA

OFFICE OF THE ATTORNEY GENERAL

No. .....

ANNEX "E"

Testimony of handwriting experts concerning handwritten statements of commissions paid to General (R) Marcos Perez Jimenez and of the amounts of money held by him in his private safe.

[fol. 222] Caracas, June 30, 1959

To the Attorney General

Office of the Attorney General

The undersigned, Victor Mileo, handwriting expert assigned by the technical section of the Judiciary Police Force to conduct an examination of the items specified below, submits the following report under oath, for the appropriate legal purposes.

EXPERT TESTIMONY

PURPOSE:

The examination in question was to be made for the purpose of establishing the identity of the characteristics of the handwriting in the signature "M. PEREZ JIMENEZ", appearing on a sheet of paper marked with number 21 in red pencil, and that of the signature "N. DUPOUY", appearing on checks Nos. 243 and 257, for the amounts of $17,002.25 and $16,492.53 respectively, both checks drawn on the "National City Bank of New York", marked in red pencil with the numbers 2 and 3; and also the same signature on a receipt for the amount of Bs. 2,000,000.00, marked in red with the number "7". The examination was also to be made to establish the identity between the handwriting appearing

[fol. 223] on the two checks mentioned above, and that of the sheets of paper marked with red numbers 4, 5, 6, 18, 19, 21, 22, 51, and 60, which carry a seal reading "Republic of Venezuela—First Judicial District—Second Civil Court of First Instance". For the purpose of comparison, the following signatures have been submitted, which are considered unquestionable: General (R) MARCOS PEREZ JIMENEZ, signature on Certificate of Taking Possession of Office as Provisional President of the Republic, dated December 3, 1952, and marked in red pencil with the number 67. Signature appearing on a document covering purchase of a lot of land from Mrs. Josefina Zuloaga de Tovar, which was executed by the Subordinate Office of the First Circuit of the Registry of the Libertador Department of the Federal District on October 10, 1950, and registered under number 14, page 22 of Registry No. 1, Volume 13. Dr. NAPOLEON DUPOUY, signature appearing on a declaration made before the Attorney General dated February 26, 1958, which consists of five pages, marked in blue pencil with the numbers 1,754, 1,755, 1,756, and 1,758.

EXPLANATION:

A detailed and scrupulous examination was made of the handwritten characters appearing in the items specified above. By means of instruments and appropriate tech-[fol. 224] nical procedure, a meticulous comparison was made of the characteristics of both the signatures submitted as unquestionable and the signatures and writing in the other items included in the study. It has been possible to establish by comparison of handwriting, that the signature "M. PEREZ JIMENEZ", appearing on the sheet of paper marked "21" in red pencil, presents all the characteristics observed in the signatures submitted as unquestionable. These characteristics coincide in the peculiar shape of the letters, pressure, interruption of continuity, expansion of the writing, speed of the graphic stroke, and the slant and average height of the letters. These two latter characteristics were proved by means of curves projected on graphs of the signatures compared, measured in tenths of millimeters, which curves show up as almost identical on

the graph drawn for the purpose. The same procedure was applied to the signatures "N. DUPOUY" submitted as unquestionable, and those appearing on the aforesaid checks and the receipt for Bs. 2,000,000.00 mentioned above. It has been possible to establish that these signatures present identical characteristics. The characteristics of the handwriting in the other items cited above were also subjected to a scrupulous and detailed examination. To the best of my knowledge and belief, and according to observations made during the meticulous tests to which items in question were subjected, I have reached the following conclusion:

[fol. 225] CONCLUSION:

1. The signature "M. PEREZ JIMENEZ" appearing on the sheet of paper marked "21" in red pencil was written by the same person who wrote the signatures submitted as unquestionable. This same person wrote the material appearing on sheets marked with the numbers 6, 18, 19, 20, 21, 22, 51, and part of number 60.

2. The signature "N. DUPOUY" on the checks marked with numbers 2 and 3 in red pencil, and the receipt for Bs. 2,000,000.00 marked in red with number 7, were written by the same person who wrote the signature submitted as unquestionable. The handwriting appearing on sheets of paper marked in red pencil with the numbers 4, 5, part of 60 and all its reverse side, was done by the same person who wrote on the aforesaid checks the number, date, and the amounts in letters and figures.

The documents submitted for the purpose of the present study are herewith returned.

The Expert

/s/ Victor Mileo
Victor Mileo

[fol. 226]

REPUBLIC OF VENEZUELA

MINISTRY OF JUSTICE

TECHNICAL SECTION OF THE JUDICIARY POLICE FORCE

VM/jn — Caracas, July 14, 1959

7-1-59 — 150 and 151

The undersigned certifies: that MR. VICTOR MILEO, who signs the present document, is an official of the Technical Section of the Judiciary Police Force.

The Director

/s/ Dr. Rodolfo Plaza Marquez

Dr. Rodolfo Plaza Marquez

[fol. 227]

(Translation of handwritten document)

No. 1 —18—

N.C.B.	$150,000 (APPROXIMATELY)	
DUPUY (sic)	91,495.45	
PETER	150,000	
	IN BOLIVARES	1,311,509.75
SMALL SAFE		
BILLS of Bs. 500		402,000
" " " 100		162,000
LARGE SAFE		
BILLS of Bs. 500		25,000
" " " 100		100,000
	TOTAL	2,000,509.75

Caracas, July 16, 1951

[fol. 228]

(Translation of handwritten document)

No. 2 —19—

In addition to the foregoing

N.C.B. $100,000 (one hundred thousand dollars)

LARGE SAFE

In bills of Bs. 500.00 and Bs. 100.00

Bs. 229,700.00 (two hundred twenty-nine thousand, seven hundred bolivares)

Caracas, Sept. 12, 1951

[fol. 229]

(Translation of handwritten document)

No. 3 —20—

In the National City Bank of New York	$250,000
In checks of Dr. Napoleon Dupouy	91,495.45
In checks of Mr. Pedro A. Peters	150,000
In checks of Mr. Vigil C. Applewhite	60,000
Total dollars	551,495.45
In the small safe	Bs. 564,000
In the large safe	" 354,000
Total bolivares	918,000

Caracas, October 29, 1951

[fol. 230]

(Translation of handwritten document)

No. 4 —21—

a) In the National City Bank of New York	$350,000.00
b) In checks of Mr. Pedro A. Peters	150,000.00
c) In American bills (large safe)	51,500.00
d) In bills in the large safe	Bs. 354,000.00
e) In bills in the small safe	" 564,000.00
f) Dr. Napoleon Dupouy owes me for various items $134,691.46, of which I owe $38,718.71 Balance	$95,972.75

Caracas, December 30, 1951

(signature almost illegible, apparently "M. Perez Jimenez".)

Bs. 2,902,589.25

[fol. 231]

(Translation of handwritten document)

No. 5 —22—

Withdrawn from the small safe Bs. 290,000.00 in bills for the purchase of bonds of the Avenida Bolivar (Corporation). Napoleon Dupuy (sic) received these bolivares and will deliver the bonds.

Caracas, February 21, 1952.

[fol. 232]

(Translation of handwritten document)

—6—

I delivered to Dr. Napoleon Dupuy (sic) in checks $151,495.45 to deposit in the N.C.B. $100,000.00 and to bring me in bills $51,495.45.

Caracas, November 28, 1951.

I gave (money) to—(partially illegible) so he could sell me 19 shares in "La Criolla" Brewery.

Caracas, November 28, 1951.

• • • • • • •

[fol. 233]

REPUBLIC OF VENEZUELA
FEDERAL COURT
CARACAS

ANNEX NUMBER SIXTEEN
(No. 16)

[fol. 234]

BANCO UNION
Incorporated Capital: Bs. 50,000,000
Caracas, Venezuela

FOR Bs. 3,000,000.00.—

We have received from Edificio Washington, C.A. the sum of THREE MILLION BOLIVARES (Bs. 3,000,-000.00), as a deposit, to be used in its entirety for the acquisition of shares in the Colonial Trust Company, of New York, at their cost price as per settlement to be made in the course of next month, January.

Caracas, December 30, 1957

/s/ Ramon Aller Alberdi
Director-General

/s/ Francisco Zacarias Hernandez
Vice President-Secretary

[fol. 235]

Caracas, January 9, 1958

Edificio Washington, C.A.

City

Dear Sirs:

By means of this letter I am notifying you *that, in accordance with instructions of General Marcos Perez Jimenez* and my personal decision we have decided not to carry out the negotiations for the acquisition of shares in the Colonial Trust Co. of New York, to which the instructions given by me to the above concern, in a letter dated December 26, 1957, refer.

I would appreciate your returning to me, as soon as possible, the sum of SIX MILLION BOLIVARES (Bs. 6,000,000.00—) which was to be used for the transactions which this communication cancels.

Attentively,

/s/ Luis Felipe Llovera Paez
Luis Felipe Llovera Paez

[fol. 236]

Edificio Washington
Componia Anonima
Esquina de la Torre
Caracas - Venezuela

Caracas, January 9, 1958

Banco Union
Present

Dear Sirs:

By means of this letter we are revoking the order communicated to you dated December 30 of last year, to purchase shares in the Colonial Trust Company of New York, for which purpose the sum of SIX MILLION bolivares (BS 6,000,000.00), in two parts of THREE MILLION each

was deposited to our order in your Institution, on December 30, 1957.

Rather, we request you to send us a check for the equivalent in Dollars of the aforementioned sum of SIX MILLION Bolivares, debiting the special account opened December 30 of last year.

With our grateful thanks, we remain,

Very truly yours,

by the ADMINISTRATIVE COUNCIL

(Signature illegible)
President

[fol. 237]

Edificio Washington
Componia Anonima
Esquina de la Torre
Caracas, Venezuela

For US$1,791,044.78

We have received from the BANCO UNION corporation (Union Bank) of this City, the sum of ONE MILLION SEVEN HUNDRED NINETY ONE THOUSAND FORTY-FOUR Dollars and 78 cents, in a bank check drawn on the Chase Manhattan Bank and duly endorsed, this sum being equivalent to the sum of SIX MILLION Bolivares which was deposited to our order in the said Institution, on December 30, 1957, in two parts of three million Bolivares each, for the purpose of investment in the purchase of shares in the Colonial Trust Company of New York.

Caracas, January 9, 1958

By the ADMINISTRATIVE COUNCIL

(Signature illegible)
President

[fol. 238] For BS 6,000,000.—

I have received from the C.A. Edificio Washington the sum of SIX MILLION BOLIVARES (BS 6,000,000.—), which amount was to be used for the acquisition of shares of the Colonial Trust Company of New York, according to the instructions given to that Corporation in my letter dated 26 December 1957, which were revoked in my letter dated the 9th inst.—

Caracas, January 14, 1958

(Signed)
Luis Felipe Llovera Paez

[fol. 239] Record of the deposition made before the Attorney General, by Dr. Cesar Gonzalez Gomez, Engineer, of this domicile, about the legal status of the Washington Building, Inc.

In Caracas, the seventeenth day of the month of April, nineteen hundred fifty-eight, at 4 PM, by request of the Attorney General, Doctor Cesar Gonzalez Gomez appeared in his office, and under oath disclosed the following in relation to the aforementioned Edificio Washington, C.A.

Q. Please state whether you are a personal friend of Generals Luis Felipe Llovera Paez and Marcos Perez Jimenez?

A. I am a person friend of General Luis Felipe Llovera Paez, and I have only a slight acquaintance with General Perez.

Q. Please state whether you are the person who originally appears as holding title in the acquisition of the old Washington Building located on Esquina de la Torre in the City of Caracas, and of another adjoining property located between Torre and Veroes?

A. Yes, it is true, and I acquired the Washington Building in the following manner: I paid the sum of Bs. 1,500,000 on account for this building, which monies came

from the following sources: Bs. 500,000 of my own and [fol. 240] Bs. 1,000,000 which General Luis Felipe Llovera Paez paid to me, *advising me that of this sum, Bs. 500,000 belonged to General Marcos Perez Jimenez* and Bs. 500,000 was his own. My friend, General Luis Felipe Llovera Paez, knowing that I was a construction engineer interested in that sort of work, indicated to me that it seemed to him advantageous for me to contribute part of the capital also, with the object of ensuring for myself the engineering work that was to be performed there, since a large building was going to be constructed there later. More than as a capitalist investing in this project, I was interested in it to obtain the contract for the corresponding work.

With respect to the other property, that which belonged to Delfin Curiel, I was granted an option, and at that time the option was granted I paid Bs. 100,000.00 which was returned to me later as I shall soon explain.

I left then, to go abroad, where I remained for two months. Upon my return I spoke with General Luis Felipe Llovera Paez about what he was thinking of doing about this affair. General Luis Felipe Llovera Paez informed me that he and his partner could not at the moment bear the total costs of the transaction, that is the payment of the balance on the Washington Building and the payment for the Curiel house, which together added up to Bs. 7,800,000.00. That they were thinking further of forming [fol. 241] a corporation with negotiable shares among a group of friends, and that I might reach an agreement with Dr. Juan Carmona and Dr. Jose Joaquin Gonzalez Gorrondona who were organizing the group and the prospective company. I contacted them. Dr. Carmona drew up the articles of the company and formed it in the following manner: Dr. Cesar Gonzalez Gomez, that is the deponent, Bs. 2,500,000.00; Dr. J. J. Gonzalez Gorrondona, Bs. 2,000,000; Comercial Prosperi, *C.A.*, Bs. 2,500,000; Dr. Juan Carmona, Bs. 1,000,000.00; Salvador Salvatierra S., Bs. 1,000,000 and Dr. Arturo Camacho C., Bs. 1,000,000.00.

The formation was completed in May of 1957. Two or three months later, I am certain that General Luis Felipe Llovera Paez bought shares to the value of Bs. 5,000,000 from the following persons: From me, 100 shares with a

value of Bs. 1,000,000.00; from Dr. Jose Joaquin Gonzalez Gorrondona, 160 shares with a value of Bs. 1,600,000.00; from Mr. Salvador Salvatierra, 80 shares with a value of Bs. 800,000.00; from Mr. Arturo Camacho, 80 shares with a value of Bs. 800,000.00, and from Dr. Juan Carmona, 80 shares with a value of Bs. 800,000.00. I am a shareholder of the Company in the amount of one million five hundred thousand Bolivares (Bs. 1,500,000.00) in three negotiable certificates Nos. 5, 6 and 7 of 50 shares each. I am able to demonstrate that I am really the owner of these shares, by [fol. 242] having had sufficient resources to purchase them, as shown in my declaration to this effect before the Treasury Department, upon the occasion of this investment in negotiable certificates. So, the ten million Bolivares (Bs. 10,000,000.00) of the company are distributed thus: General Luis Felipe Llovera Paez Bs. 5,000,000.00; *Comercial Prosperi, C.A.*, Bs. 2,500,000.00; and the Carmona Group, made up of Dr. Juan Carmona, Dr. Jose Joaquin Gonzalez Gorrondona, Mr. Salvador Salvatierra and Mr. Arturo Camacho, Bs. 1,000,000.00. The certificates were delivered to their owners, thus: A single certificate for Bs. 5,000,000.00 to General Luis Felipe Llovera Paez; the three certificates of my shares already mentioned; 2 certificates of Bs. 1,000,000.00 and one certificate of Bs. 500,000.00 to the Comercial Prosperi, two certificates of Bs. 200,000.00 to Dr. Jose Joaquin Gonzalez Gorrondona; one certificate of Bs. 200,000.00 to Mr. Salvador Salvatierra, and one certificate of Bs. 200,000.00 to Mr. Arturo Camacho.

Q. Please state, Doctor, whether General Llovera Paez ever told you who was the partner he always used to mention?

A. *General Marcos Perez Jimenez.* I imagine that the shares of General Llovera Paez, or that is *the Bs. 5,000,000.00, belonged one-half to him and one-half to General Marcos Perez Jimenez,* considering the great friendship [fol. 243] which existed between them, and considering also the circumstance that the first Bs. 1,000,000.00 contributed for the transaction was Bs. 500,000 from General Llovera Paez and Bs. 500,000 from General Perez.

Q. Please state whether besides the Bs. 10,000,000.00 mentioned, the Company of which you are President received

other amounts from Generals Luis Felipe Llovera Paez and Marcos Perez Jimenez?

A. Dr. Juan Carmona informed me that there had been deposited in a "Special Account" of the Edificio Washington, C.A., in the Banco Union, the amount of six million Bolivares in two lots of three million Bolivares each, belonging to Generals Marcos Perez Jimenez and Luis Felipe Llovera Paez, to be invested in shares of the Colonial Trust Company of New York. Those amounts were deposited on December 30, 1957. In the first days of January, 1958, after the military events in Maracay, Dr. Juan Carmona himself informed me that the aforementioned Generals had abandoned the purchase of the shares referred to, and since the amount in question was deposited in the name of the Edificio Washington, C.A., of which I am president, *I was asked to direct the bank to deliver this amount to Generals Perez Jimenez* and Llovera Paez, as was done; General Llovera Paez having received, in his name and *in the name of General Perez Jimenez*, a check in dollars equivalent to [fol. 244] Bs. 6,000,000.00, although the receipt was presented for the amount in Bolivares, (Bs. 6,000,000.00). I have the original receipt and I promise to send you a photostatic copy. Outside of these sums, the company has not received any other amount.

Q. Please state how the Bs. 10,000,000, which form the capital of the Edificio Washington, C.A. have been invested?

A. In the purchase of the real estate referred to, the sum of approximately Bs. 9,300,000.00, the rest in registration expenses, formation of the Company, commissions, wrecking of buildings, plans and blueprints for the building.

Q. Do you believe that the Comercial Prosperi, C.A. is the legitimate owner of the shares which appear in its name?

A. I believe so. I have known Raffali for many years. I believe he has money and therefore I believe that the Comercial Prosperi company which he represents is the legitimate owner of the shares. It is also true that Raffali is a very good friend of General Llovera Paez.

Q. Do you think that the other persons appearing as shareholders are the legitimate owners of their shares?

A. I have no reason to think the contrary. I cannot be sure, since all are well-known capitalists.

And, having nothing further to declare and not having [fol. 245] been interrogated further by the Attorney General, the present deposition is concluded.

(Signed)
Dr. Cesar Gonzalez Gomez

(Signed)
Dr. Pablo Ruggeri Parra
Attorney General

• • • • • • •

[fol. 246]

REPUBLIC OF VENEZUELA

FEDERAL COURT

CARACAS

ANNEX NUMBER SEVENTEEN

(No. 17)

[fol. 247] "1"

N. DUPOUY
Edificio San Bernardino
Avendia Panteon
San Bernardino
CARACAS, VENEZUELA

—2—

VEN NAPOLEON DUPOUY

July 9th, 1952 1.8
No. 257 210

Pay to the
order of $16,492.53
sixteen thousand four hundred ninety two 53/100 DOLLARS

To
THE NATIONAL CITY BANK OF NEW YORK
Overseas Division 55 Wall Street
New York, U.S.A.

/s/ N. DUPOUY

—3—

VEN NAPOLEON DUPOUY

No. 243 January 30th, 1952 1.8
210

Pay to the
order of $17,002.25
seventeen thousand two 25/100 ———— DOLLARS

To
THE NATIONAL CITY BANK OF NEW YORK
Overseas Division 55 Wall Street
New York, U.S.A.

/s/ N. DUPOUY

[fol. 248]

(Translation of a handwritten document)

—4—

Deposit in New York	$100,000
in bolivares (Bs. 229,700)	68,979
	$168,979

3rd destroyer: £ 2,660,000

5% = 133,000 × 28 = $372,400

2/5 = $148,960

The difference (168,979 — 148,960) or $20,019, was applicable to F. N.

To this effect there remained pending:

5,902
19,136.25
11,983

37,021.25

Subtracting the $20.019 already paid, there remains a balance of $17,002.25 (37,021.25 — 20,019), that is delivered in check No. 243, thus paying off F. N.

1/30/52

[fol. 249]

(Translation of a handwritten document)

"TANKS	$ 601,800	258,774	you
		180,540	me
		120,360	successor
		42,126	Pulido
"ANSALDO	$1,567,500	785,000	you
		482,500	me
		300,000	successor
"BOATS	$ 340,359	170,175	you
		102,105	me
		68,070	successor
"VISCOUNT	$ 317,121	190,272	you
		126,848	me

"The transportation was settled and paid last February 25th: Bs. 260,879.05, equivalent to $78,500.00."

[fol. 250]

(Translation of a handwritten document)

—6—

I delivered to Dr. Napoleon Dupuy (sic) in checks $151,495.45 to deposit in the N.C.B. $100,000.00 and to bring me in bills $51,495.45.

Caracas, November 28, 1951.

I gave (money) to—(partially illegible) so he could sell me 19 shares in "La Criolla" Brewery.

Caracas, November 28, 1951.

[fol. 251]

(Translation of a handwritten document)

Contract of 6-30-50

Total: 5% on $1,701,000 = $85,050.

Delivered:

August 31, 1950: 5,700 - 5,700 - 5,700 - 7,173.23 = 24,273.23

November 22, 1950: 5,000 - 5,000 - 8251.73 = 18,251.73

$42,524.96

Pending execution: 42,525.04

Contract of 12-15-50

Total: 6½% on $511,000 = $33,215.

Divided up as follows:

3½% = 17,885

1% = 5,110

1% = 5,110

1% = 5,110

No delivery has been made.

Settled and to be delivered: 33% or:

5,902

1,686.30

1,686.30

1,686.30 10,960.90

[fol. 252]

(Translation of a handwritten document)

—60—

General resume:

to be delivered: 10,960.90

pending execution of the respective contracts.

Contract 6-30-50	42,525	
" 12-15-50	22,254	
	$64,779	

Personal resume:

to be delivered:	5,902.00
pending execution:	
Contract 6-30-50	19,136.25
" 12-15-50	11,983.
Bofors	58,951.50
	$95,972.75

in bolivares:

Compania Bernard: Bs. 125,000.00 (This sum was already paid). The remainder is pending plus a sum not determined from Bernard.

• • • • • • •

[fol. 253]

IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT FOR EXTRADITION—Filed September 11, 1959

Comes now Manuel Aristeguieta, the plaintiff herein and the Consul General of the Republic of Venezuela for the States of Florida, Georgia, and South Carolina, duly appointed and acknowledged by the Government of the Republic of Venezuela and duly recognized by the Government of the United States of America, and amends his complaint for extradition herein to allege as follows:

1. The plaintiff is located in and has his office in Miami, Florida.

2. The defendant is Marcos Perez Jimenez, a citizen of the Republic of Venezuela, over forty years of age, now to be found in Miami Beach, Florida, within the territorial jurisdiction of this Court.

3. This Court has jurisdiction of this cause by virtue of 18 U.S. Code 3184 and the Treaty of Extradition of January 19, 1922, between the Governments of the Republic of Venezuela and of the United States of America proclaimed January 2, 1924, appearing in 43 Stat. 1698, and [fol. 254] now in full force and effect.

4. The defendant has been duly charged by appropriate proceeding in the Republic of Venezuela with having committed, while he was actually within Venezuela, certain common crimes, specifically referred to hereinafter.

5. The complaint herein was made on instructions to the plaintiff from the Charge d'Affaires, a. i., of the Republic of Venezuela in Washington, D. C. This amended complaint is made on instructions to the plaintiff from the Ambassador of the Republic of Venezuela in Washington, D. C.

6. On August 23, 1959, the Charge d'Affaires, a. i., of the Republic of Venezuela in Washington, D. C., presented a note to the Secretary of State of the United States re-

questing the provisional arrest and detention, with a view to extradition, of the defendant. On the same date, Mr. R. R. Rubottom, Assistant Secretary of State for Latin American Affairs, on behalf of the Secretary of State, replied to that note, stating that, after the defendant's "provisional arrest and detention upon complaint made by a diplomatic or consular officer of Venezuela and the procedure provided in Section 3184 of Title 18 of the United States Code, the Department of State will be pleased to consider a formal request for extradition." A copy of the note on behalf of the Secretary of State is attached hereto as Exhibit A.

[fol. 255] 7. On August 24, 1959, the Embassy of the Republic of Venezuela in Washington, D. C., received from the Government of the Republic of Venezuela the extradition documents in this matter. They include, among other things, an order of arrest of the defendant, issued by the Federal Court of Venezuela at Caracas on August 12, 1959, on the basis of the defendant's alleged committing of certain common crimes, including those specifically referred to hereinafter, and a ruling by such Court in such order that there is reasonable cause to believe that the defendant is guilty of such crimes. Such ruling recites that it was based on the evidence appearing in the record before such Court. A copy of such order and ruling is attached hereto as Exhibit B. An accurate English translation thereof is attached hereto as Exhibit C, together with the affidavit of the translator as Exhibit D.

8. Thereafter, the complaint herein was made by the plaintiff on August 24, 1959.

9. On August 25, 1959, the aforesaid Charge d'Affaires delivered a note to the Secretary of State of the United States requesting the extradition of the defendant and transmitting the extradition documents. A copy of an accurate English translation of this note is attached hereto as Exhibit E. On the same date, Col. John M. Raymond, Deputy Legal Adviser to the Secretary of State, on behalf of the Secretary of State, replied to such note, acknowledg-
[fol. 256] ing the formal request for extradition and re-

turning the extradition papers "in order that they may be presented by a diplomatic or consular officer of Venezuela to an appropriate judge or commissioner in the United States in connection with" the hearing provided in 18 U.S. Code 3184. A copy of this reply is attached hereto as Exhibit F.

10. The aforesaid extradition documents are now in the possession of the Embassy of the Republic of Venezuela in Washington, D. C. They consist of some three hundred pages, in Spanish. Qualified translators are now at work on an English translation thereof but, because of their volume and technical character, such translation will not be completed for a considerable period of time. These documents will be filed with this Court upon completion of the translation and within the period of two months after the defendant's arrest as contemplated by Article XII of the Treaty of Extradition.

11. Such extradition documents contain the record of the following proceeding under the law of the Republic of Venezuela:

Charges were filed against the defendant by the Attorney General of the Republic of Venezuela in the Federal Court of such Republic at Caracas, with voluminous supporting documentary evidence.

[fol. 257] After consideration of such charges and evidence, such Court decreed on July 30, 1959, that sufficient cause had been established for the trial of the defendant on the charges.

Thereupon the order and ruling referred to in paragraph 7 of this amended complaint were issued on August 12, 1959.

Such Court, on August 13, 1959, determined that the National Executive of the Republic of Venezuela should request the extradition of the defendant from the United States of America on the basis of charges of crimes within Article II, sections 1, 2, 14 and 21 of the aforesaid Treaty of Extradition; that justification for such extradition under such Treaty had been established as a matter of fact and of law; and that, upon extradition, the defendant would be tried only for the offenses for which his extradition

is requested and in no case for offenses of a political character. A copy of such determination is attached hereto as Exhibit G. An accurate English translation thereof is attached hereto as Exhibit H, together with the affidavit of the translator as Exhibit I.

The extradition documents are duly authenticated as required by law, including the authentication of the Ambassador of the United States of America in Caracas, Venezuela, being the authentication prescribed by 18 U.S. Code 3190. A copy of the authentications is attached hereto as Exhibit J.

[fol. 258] 12. Of the charges of common crimes thus made against the defendant those for which his extradition is sought from the United States of America are specified in Exhibit B (the translation of which appears in Exhibit C) and in Exhibit G (the translation of which appears in Exhibit H) and may be summarized as follows:

A. The defendant, while in Venezuela, in violation of law ordered the unlawful murders of Dr. Leonardo Ruiz Pineda, of Dr. German Gonzalez, of Dr. Antonio Pinto Salinas, and of Mr. Luis Hurtado, by persons purporting to act as officials of an agency known as the Seguridad Nacional whose conduct in fact was fully controlled and determined by the defendant.

The murder of Dr. Leonardo Ruiz Pineda occurred on the night of October 21, 1952, in Caracas, Venezuela, on Avenida Principal de San Agustin del Sur by shooting with revolvers fired by various agents of the Seguridad Nacional, among whom were Daniel Colmenares (alias Suelespuma), Jose Luis Arias, and Francisco Ramon Matute.

The murder of Dr. German Gonzales occurred on the night of October 22, 1952, carried out in the headquarters of the Seguridad Nacional in Caracas.

The murder of Dr. Antonio Pinto Salinas occurred in the early morning of June 11, 1953, in the township of [fol. 259] San Juan de los Morros, Roscio District, State of Guarico, Venezuela, on the Los Llanos Highway at a point known as Cueva de Tigre by shooting with a rifle

and a machine gun fired by Braulio Barreto Pacheco and Isidoro Marrero Mendez, agents of the Seguridad Nacional.

As to the murder of Mr. Luis Hurtado this amended complaint will be amended later to provide particulars after completion of the translation of the extradition documents.

Such murders were common crimes in violation of Article 407 of the Penal Code of the Republic of Venezuela, which provides:

> "Whoever has voluntarily inflicted death on any person shall be punished with imprisonment for twelve to eighteen years."

The defendant was an accessory thereto within the meaning of Article 84 of such Penal Code, which provides:

> "The penalty corresponding to the applicable crime, reduced by one-half, shall be suffered by any person who has participated therein in any of the following ways:
>
> 1. Inciting or abetting the decision to commit the crime or giving a promise of aid and assistance after its commission.
>
> [fol. 260] 2. Giving instructions or supplying means for its commission.
>
> 3. Facilitating the performance of the act or aiding and abetting its performance, either before or during its performance.
>
> The reduction of the penalty provided in this article shall be inapplicable, in any of the cases herein specified, to persons without whose participation the act would not have been committed."

B. (1) The defendant was one of three members of the Government Junta of the Republic of Venezuela from November 24, 1948, until December 2, 1952. Such Junta was the supreme power in the Republic during such period. Then from December 2, 1952, until January 23, 1958, he

was the Chief Executive of the Republic. As a member of the Junta he, jointly with the other two members thereof, and as Chief Executive he alone was charged with the management of the public funds of the Republic and did in fact manage and control such funds. While he was in Venezuela, during such period from time to time and in violation of law he misappropriated to his personal use and benefit many millions of bolivares (equivalent to many millions of United States dollars), the exact amount and [fol. 261] the exact times of each such misappropriation being presently unknown to the plaintiff.

(2) Likewise, while the defendant was in Venezuela, during such period from time to time and in violation of law, he exacted so-called commissions and promises of commissions, paid or to be paid either to him or to persons on his behalf, for his personal use and benefit, amounting to many millions of bolivares (equivalent to many millions of United States dollars), the exact amount and the exact times of each such payment of commissions or promise being presently unknown to the plaintiff. Such payments and promises were made by persons selling to, or interested in the sale to, the Government of the Republic of Venezuela of arms, tanks, launches, airplanes and other articles, and were made in connection with such sales and were required by the defendant to secure his consent to such sales.

Included among the aforesaid exactions is a contract by two Italian companies, Covelsa and C.I.T.I.M., entered into in Caracas on August 23, 1955, whereby Covelsa promised to pay to a Venezuelan company, Polinversiones C.A., ten per cent of Covelsa's bid to furnish materials and supplies for construction of a hydro-electric plant in Venezuela if its bid were accepted by the Venezuelan Government. The bid was accepted. Polinversiones C.A. was bene- [fol. 262] ficially owned by the defendant through which he received such commission, for his personal use and benefit, demanded by him as a condition to the award of such Government contract.

Such misappropriations and such exactions of commissions and of promises were in violation of the following provisions of the Penal Code of the Republic of Venezuela:

Article 195:

"Every public official who embezzles funds or other personal property, the collection, custody or management of which has been entrusted to him by virtue of his office, shall be punished with imprisonment for three to ten years.

"If the loss is not heavy, or if complete reparation is made before the guilty party is brought to trial, he shall suffer imprisonment for three to twenty-one months."

Article 196:

"Every official who by abuse of his office forces a person to give or to promise to him or to any third party any sum of money or other illicit profit or gift shall be punished with imprisonment for eighteen months to five years.

[fol. 263] "If the amount or thing illicitly given or promised is of little value, the period of imprisonment shall be for three to twenty-one months."

Article 198:

"Every official who, for the performance of any official duty, receives for his own or another's account, a remuneration, whether in the form of money or any other thing which is not due him, or accepts any offer of such remuneration, shall be punished with imprisonment for one to two months."

Article 199:

"Every public official who receives or exacts a promise of money or other benefit, either directly or through another person, for delaying or omitting any official duty, or for doing an act which is contrary to that duty, shall be punished with imprisonment for a period of three to five years. The term of imprisonment shall be for a period of four to eight years if the offense has resulted in:

[fol. 264] 1. The grant of public employment, subsidies, pensions or honors, or the award of contracts in which the agency employing the official has an interest.

2. Tending to cause any loss or injury to any of the parties to a civil action or to a party found guilty in a criminal proceeding.

"If the act has resulted in a conviction carrying a restriction of personal liberty in excess of six months, the term of imprisonment shall be three to ten years."

Article 205:

"Every public official who directly, or through an intermediary or by deceit, obtains for himself any personal benefit in any act of public administration in which he performs a function shall be punished with imprisonment for six months to five years."

13. Attached hereto as Exhibit K are provisions of the Venezuela Penal Code involved in the proceedings before the Federal Court, as included in the extradition documents. Relevant quotations from these provisions are set forth in paragraph 12 of this amended complaint. An accurate English translation of Exhibit K is attached hereto [fol. 265] as Exhibit L, together with the affidavit of the translator as Exhibit M.

14. Based upon the preceding paragraphs of this amended complaint, the plaintiff charges the defendant with having committed, within the jurisdiction of the Republic of Venezuela and while the defendant was physically present within such jurisdiction, the crimes specified in paragraph 12 of this amended complaint.

15. The offenses thus charged against the defendant are crimes within Article II, sections 1, 2, 14 and 21 of the aforesaid Treaty of Extradition. The defendant is not exempt from prosecution or punishment therefor, from lapse of time or other lawful cause, under the laws of the Republic of Venezuela.

Wherefore, the plaintiff prays that this Court shall not terminate the arrest of the defendant, heretofore effected on the complaint herein and the warrant issued pursuant thereto, and that the defendant be brought in due course before this Court, or a commissioner hereof, for a hearing and consideration of evidence of the defendant's criminality as provided in 18 U.S. Code 3184; and the plaintiff further prays that, after such hearing, a certification as provided in 18 U.S. Code 3184 be issued to the Secretary of State of the United States of America in order that the surrender of the defendant may be effected upon requisition of the proper authorities of the Republic of Venezuela; [fol. 266] and the plaintiff further prays for such other or different relief as may be just and proper in the premises.

Manuel Aristeguieta, Consul General of the Republic of Venezuela.

William G. Ward, Ward & Ward, 1240 Dupont Building, Miami, Florida: Howard C. Westwood, Covington & Burling, Union Trust Building, Washington 5, D. C., Attorneys for Plaintiff.

City of Miami,
County of Dade,
Southern District of Florida,
Miami Division, ss.:

Before me, the undersigned United States District Judge personally appeared, this 11th day of September 1959, Manuel Aristeguieta, Consul General of the Republic of Venezuela, located at Miami, Florida, who, upon being [fol. 267] duly sworn, upon oath states that, upon information and belief, the allegations contained in the aforesaid amended complaint are true; and that such information and belief on his part are based upon (a) his personal examination of the extradition documents in the case of Marcos Perez Jimenez forwarded to the Embassy of the Republic of Venezuela in Washington, D. C., by the Government of the Republic of Venezuela, all of which he has

personally read, supplemented by consultation with his attorneys and with the Ambassador of the Republic of Venezuela in Washington, D. C., who is a member of the bar of the Republic of Venezuela and until recently was in active practice of law in such Republic, (b) the affidavits of translators copies of which are attached to the amended complaint as Exhibit D and as Exhibit I and as Exhibit M, and (c) copies of notes between the Charge d'Affaires, a. i., of the Republic of Venezuela in Washington, D. C., and the Department of State of the Government of the United States of America, and information relating thereto, duly transmitted to him by such Charge d'Affaires.

Wm. C. Mathes, United States District Judge.

[fol. 268]

IN UNITED STATES DISTRICT COURT

AMENDMENT NO. I TO AMENDED COMPLAINT FOR EXTRADITION—Filed November 23, 1959

Comes now Manuel Aristeguieta, the plaintiff herein and the Consul General of the Republic of Venezuela for the States of Florida, Georgia, and South Carolina, duly appointed and acknowledged by the Government of the Republic of Venezuela and duly recognized by the Government of the United States of America, and amends paragraph 12 of his amended complaint for extradition herein to allege as follows:

12. Of the charges of common crimes thus made against the defendant those for which his extradition is sought from the United States of America are specified in Exhibit B (the translation of which appears in Exhibit C) and in Exhibit G (the translation of which appears in Exhibit H) and may be summarized as follows:

A. (1) The defendant, while in Venezuela, in violation of law confederated, schemed, connived and agreed with persons connected with an organization known as the Seguridad Nacional to effect the murders of certain per-
[fol. 269] sons in Venezuela. In the course of and in pur-

suance of such scheme, Dr. Leonardo Ruiz Pineda, Dr. German Gonzales, Dr. Antonio Pinto Salinas and Mr. Luis Hurtado Higuera were murdered by persons purporting to act as agents of the aforesaid Seguridad Nacional.

(2) The defendant, while in Venezuela, in violation of law ordered the unlawful murders of Dr. Leonardo Ruiz Pineda, of Dr. German Gonzales, of Dr. Antonio Pinto Salinas, and of Mr. Luis Hurtado Higuera, by persons purporting to act as agents of the Seguridad Nacional, whose conduct in fact was controlled and determined by the defendant.

The murder of Dr. Leonardo Ruiz Pineda occurred on the night of October 21, 1952, in Caracas, Venezuela, on Avenida Principal de San Agustin del Sur, by shots from revolvers fired by various agents of the Seguridad Nacional, among whom were Daniel Colmenares (alias Sueles-puma), Jose Luis Arias, and Francisco Ramon Matute.

The murder of Dr. German Gonzales occurred on the night of October 22, 1952, in the headquarters of the Seguridad Nacional in Caracas.

The murder of Dr. Antonio Pinto Salinas occurred in the early morning of June 11, 1953, in the township of San Juan de los Morros, Moscio District, State of Guarico, Venezuela, on the Los Llanos Highway at a point known [fol. 270] as Cueva de Tigre by shots from a rifle and a machine gun fired by Braulio Barreto Pacheco and Isidoro Marrero Mendez, agents of the Seguridad Nacional.

The murder of Mr. Luis Hurtado Higuera occurred in Venezuela.

Such murders were common crimes in violation of Article 407 of the Penal Code of the Republic of Venezuela, which provides:

> "Whoever has voluntarily inflicted death on any person shall be punished with imprisonment for twelve to eighteen years."

If not a principal in such murders, the defendant was an accessory thereto within the meaning of Article 84 of the Penal Code of the Republic of Venezuela, which provides:

"The penalty corresponding to the applicable crime, reduced by one-half, shall be suffered by any person who has participated therein in any of the following ways:

1. Inciting or abetting the decision to commit the crime or giving a promise of aid and assistance after its commission.

2. Giving instructions or supplying means for its commission.

[fol. 271] 3. Facilitating the performance of the act or aiding and abetting its performance, either before or during its performance.

The reduction of the penalty provided in this article shall be inapplicable, in any of the cases herein specified, to persons without whose participation the act would not have been committed."

B. The defendant was one of three members of the Government Junta of the Republic of Venezuela from November 24, 1948, until December 2, 1952. Such Junta was the supreme power in the Republic during such period. From December 2, 1952, until January 23, 1958, defendant was the Chief Executive of the Republic. As a member of the Junta, he, jointly with the other two members thereof, and as Chief Executive he alone was entrusted with administration of the public funds of the Republic, and he did in fact administer and control such funds. As a member of the Junta, defendant, jointly with other members of the Junta, and as Chief Executive he alone had responsibility for administering the public affairs of the Republic, including the awarding of contracts for supplies and materials and for public works. During such period defendant by himself and in concert with others engaged in [fol. 272] a series of acts which had as an objective his and their illicit enrichment at the expense of the public.

(1) During such period, from time to time and in violation of law, defendant, while in Venezuela, abstracted and misappropriated funds with the administration and custody of which he had been entrusted, in the amount of many

millions of bolivares (equivalent to many millions of United States dollars), and converted them to his personal use and benefit and the use and benefit of others. Specific means and devices whereby the defendant abstracted and misappropriated funds with the administration and custody of which he had been entrusted by virtue of his office included:

(a) the conversion to his own use and benefit and the use and bene[illegible] of others of funds in the public treasury;

(b) the diversion to himself through intermediaries and to others of funds in the public treasury;

(c) causing improvements to be made and work to be done on his private property and in connection with his private ventures at public expense, in some cases by public employees using tools and machinery the property of the public;

(d) causing grants and loans of public funds to be made to enterprises in which he had an interest;

(e) the receipt by him and by others on his behalf and [fol. 273] otherwise and the conversion to his and their use and benefit of so-called commissions and other rewards and benefits in connection with the negotiation and award of contracts for the purchase with public funds of arms, tanks, launches, airplanes and other articles or property supplied or to be supplied to the Republic of Venezuela;

(f) the payment to himself and to others on his behalf and otherwise of public funds for the purchase of real and personal property at inflated values by the Republic of Venezuela and in connection with other transactions with the Republic of Venezuela from which he and others on his behalf and otherwise unlawfully benefited.

(2) (a) During such period, from time to time and in violation of law, the defendant, while in Venezuela, corruptly discharged the functions of his office by receiving commissions and other benefits and rewards and promises of such commissions and other benefits and rewards not due to him, paid or to be paid to him or to other persons

on his behalf, for his personal use and benefit, amounting to many millions of bolivares (equivalent to many millions of United States dollars).

(b) During such period, from time to time and in violation of law, the defendant, while in Venezuela, corruptly discharged the functions of his office by exacting so-called [fol. 274] commissions and other benefits and rewards and promises of such commissions and other benefits and rewards not due to him, paid or to be paid to him or other persons on his behalf, for his personal use and benefit, amounting to many millions of bolivares (equivalent to many millions of United States dollars).

Such payments and promises, exacted or received by the defendant in the corrupt discharge of his office, were made by persons selling to, or interested in the sale to, the Government of the Republic of Venezuela of arms, tanks, launches, airplanes and other articles or property and were made in connection with such sales.

(3) (a) During such period, from time to time and in violation of law, the defendant, while in Venezuela, corruptly discharged the functions of his office by causing, directly and through persons acting on his behalf, improvements to be made and work to be done on his private property and in connection with his private ventures at public expense, in some cases by public employees using tools and machinery the property of the public.

(b) During such period, from time to time and in violation of law, the defendant, while in Venezuela, corruptly discharging the functions of his office, obtained for himself, directly and through persons acting on his [fol. 275] behalf, benefits from acts of public administration in which he performed functions directly or by reason of his general responsibility for the affairs of the Republic by

(i) the sale to the Republic at inflated values of property which the defendant owned or in which he had an interest, and

(ii) making grants and loans of public funds to enterprises in which the defendant had an interest.

The acts described in this subparagraph B. were in violation of the following provisions of the Penal Code of the Republic of Venezuela:

Article 195:

"Every public official who abstracts funds or other personal property, the collection, custody, or administration of which has been entrusted to him by virtue of his office, shall be punished by hard labor for three to ten years.

"If the loss is not heavy, or if complete reparation is made before the guilty party is brought to trial, he shall suffer imprisonment for three to twenty-one months."

[fol. 276] Article 196:

"Every official who by abusing his office forces a person to give or to promise to him or to any third party any sum of money or other illicit profit or gift shall be punished by imprisonment for eighteen months to five years.

"If the amount or thing illicitly given or promised is of little value, the period of imprisonment shall be for three to twenty-one months."

Article 198:

"Every official who, for the performance of any official duty, receives for his own or another's account, a remuneration, whether in the form of money or any other thing which is not due him, or accepts any offer of such remuneration, shall be punished by imprisonment for one to two months."

Article 199:

"Every public official who receives or exacts a promise of money or other benefit, either directly or through [fol. 277] another person, for delaying or omitting any official duty, or for doing an act which is contrary to that duty, shall be punished by hard labor for a period

of three to five years. The term of hard labor shall be for a period of four to eight years if the offense has resulted in:

1. The grant of public office, emoluments, pensions or honors, or the award of contracts in which the agency employing the official has an interest.

2. Tending to cause any loss or injury to any of the parties to a civil action or to a party found guilty in a criminal proceeding.

"If the act has resulted in a conviction carrying a restriction of personal liberty in excess of six months, the term of hard labor shall be three to ten years."

Article 205:

"Every public official who directly, or through an intermediary or by deceit, obtains for himself any personal benefit in any act of public administration in [fol. 278] which he performs a function shall be punished with imprisonment for six months to five years."

Manuel Aristeguieta, Consul General of the Republic of Venezuela.

William G. Ward, Ward & Ward, 1240 duPont Building, Miami, Florida; Howard C. Westwood, per WHA, Covington & Burling, 701 Union Trust Building, Washington, D. C., Attorneys for Plaintiff.

[fol. 279] City of Miami,
County of Dade,
Southern District of Florida,
Miami Division, ss.:

Before me, the undersigned United States District Judge personally appeared, this 23rd day of November, 1959, Manuel Aristeguieta, Consul General of the Republic of Venezuela, located at Miami, Florida, who, upon being duly sworn, upon oath states that, upon information and belief, the allegations contained in the foregoing amend-

ment to the amended complaint filed herein on September 24, 1959, are true; and that such information and belief are based upon (a) his personal examination of the extradition documents in the case of Marcos Perez Jimenez forwarded to the Embassy of the Republic of Venezuela in Washington, D. C., by the Government of the Republic of Venezuela, all of which he has personally read, (b) instructions and advice from the Embassy of the Republic of Venezuela in Washington, D. C., and (c) consultation with his attorneys.

Wm. C. Mathes, United States District Judge.

[fol. 280]

IN UNITED STATES DISTRICT COURT

AMENDMENT NO. II TO AMENDED COMPLAINT FOR EXTRADITION—Filed November 23, 1959

Comes now Manuel Aristeguieta, the plaintiff herein and the Consul General of the Republic of Venezuela for the States of Florida, Georgia, and South Carolina, duly appointed and acknowledged by the Government of the Republic of Venezuela and duly recognized by the Government of the United States of America, and amends paragraphs 11 and 15 of his amended complaint for extradition herein to allege as follows:

11. Such extradition documents contain the record of the following proceeding under the law of the Republic of Venezuela:

Charges were filed against the defendant by the Attorney General of the Republic of Venezuela in the Federal Court of such Republic at Caracas, with voluminous supporting documentary evidence.

After the consideration of such charges and evidence, [fol. 281] such Court decreed on July 30, 1959, that sufficient cause had been established for the trial of the defendant on the charges.

Thereupon the order and ruling referred to in paragraph 7 of this amended complaint were issued on August 12, 1959.

Such Court, on August 13, 1959, determined that the National Executive of the Republic of Venezuela should request the extradition of the defendant from the United States of America on the basis of crimes within Article II of the aforesaid Treaty of Extradition; that justification for such extradition under such Treaty had been established as a matter of fact and law; and that, upon extradition, the defendant would be tried only for the offenses for which his extradition is requested and in no case for offenses of a political character. On November 10, 1959, the Federal Court clarified the aforesaid determination of August 13, 1959, by specifying that its naming sections 1, 2, 14 and 21 of Article II of the aforesaid Treaty was meant to be illustrative and not exclusive and that defendant's common crimes also came within other sections of said Article II, including, again without limitation, sections 18 and 20. A copy of the determination of August 13, 1959, is attached to the amended complaint as Exhibit G. An accurate English translation thereof is attached to the [fol. 282] amended complaint as Exhibit H, together with the affidavit of the translator as Exhibit I. A copy of the Federal Court's clarification of such determination, dated November 10, 1959, is attached to this amendment to the amended complaint as Exhibit N, together with an accurate English translation thereof as Exhibit O and the affidavit of the translator as Exhibit P.

The extradition documents are duly authenticated as required by law, including the authentication of the Ambassador of the United States of America in Caracas, Venezuela, being the authentication prescribed by 18 U.S. Code 3190. A copy of the authentications is attached to the amended complaint as Exhibit J.

15. The offenses thus charged against the defendant are crimes within Article II of the aforesaid Treaty of Extradition, including, but not limited to, sections 1, 2, 14, 18, 20 and 21 of said Article. The defendant is not exempt from prosecution or punishment therefor, from lapse of time or other lawful cause, under the laws of the Republic of Venezuela.

Manuel Aristeguieta, Consul General of the Republic of Venezuela.

[fol. 283] William G. Ward, Ward & Ward, 1240 Dupont Building, Miami, Florida; Howard C. Westwood, Covington & Burling, Union Trust Building, Washington 5, D. C., Attorneys for Plaintiff.

[fol. 290] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 297] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

—against—

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PETITION FOR PERMISSION TO FILE PETITION FOR WRIT OF PROHIBITION OR MANDAMUS WITH PETITION ATTACHED —Filed January 20, 1960

Petitioners, The First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada, move this Court for leave to file a petition for a writ of prohibition or mandamus, which petition is hereto attached, and that an order to show cause be entered, directed to The Honorable William C. Mathes,

United States District Judge, and to the United States District Court for the Southern District of Florida, Miami Division, commanding them to be and appear before this Court within a time to be fixed by this Court to show cause why said petition should not be granted, and further move, in order to prevent irreparable loss to petitioners, that this Court order an immediate stay of all proceedings to enforce against petitioners subpoenas directed against them in the extradition proceeding entitled Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic Venezuela, Plaintiff, v. Marcos Perez Jimenez, Defendant, No. 9425-M-Civil, pending in the United States District Court for the Southern District of Florida, Miami Division, until said petition for a writ of prohibition or mandamus be heard and determined in this Court, and for such other and further relief as may be just.

[fol. 298] Dated at Miami, Florida, this 14th day of January, 1960.

The First National City Bank of New York, By Shearman & Sterling & Wright, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; French American Banking Corporation, By Coudert Brothers, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; The Royal Bank of Canada, By Sage, Gray, Todd & Sims, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey, 401 Industrial National Bank Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 299]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS —Filed January 20, 1960

To the Honorable Chief Judge and Judges of the United States Court of Appeals for the Fifth Circuit:

The Petition of the First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada against The Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, respectfully shows:

1. Your petitioners, The First National City Bank of New York (hereinafter called "City Bank"), French American Banking Corporation (hereinafter called "French American") and The Royal Bank of Canada (hereinafter called "Royal Bank"), were each served with a subpoena duces tecum in New York City on or about December 2, 1959.

2. The subpoenas were addressed to officers of petitioners in New York City and required appearance before the United States District Court for the Southern District of Florida, Miami Division, and the production of records of bank accounts of 21 named persons and entities for the period March 14, 1949 to November 25, 1959. Such records include copies of checks, drafts, bills of exchange, deposit and withdrawal slips, statements of account and all related correspondence. A copy of the subpoena served on City Bank is annexed hereto as Exhibit A. A copy of the subpoena served on French American is annexed hereto as Exhibit B. A copy of the subpoena served on Royal Bank is annexed hereto as Exhibit C.

[fol. 300] 3. Each subpoena states that it is issued on motion of the plaintiff (the diplomatic representative of

the demanding country) in a proceeding for extradition under Section 3184 of Title 18, U. S. Code, and pursuant to the Treaty of Extradition between the United States and Venezuela [43 Stat. 1698 (1923)].

4. The extradition proceeding referred to in Paragraph 3 above is entitled Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff, v. Marcos Perez Jimenez, Defendant, and was commenced on or about August 24, 1959 by the filing of a complaint with the United States District Court for the Southern District of Florida, Miami Division. Such complaint seeks the extradition of Marcos Perez Jimenez on the grounds of complicity in homicides, extortion, bribery, illicit enrichment, embezzlement and criminal malversation.

5. On November 16, 1959 an order was entered in the aforesaid extradition proceeding directing that such proceeding would be governed by the Federal Rules of Criminal Procedure and that the Federal Rules of Civil Procedure would not apply. A copy of such order is annexed hereto as Exhibit D.

6. On November 23, 1959 an order was entered in the aforesaid extradition proceeding vacating the order entered on November 13, 1959 and reciting that it is the opinion of the Court that the procedure in such proceeding is to be governed as stated in the Treaty and that the right of subpoena exists as relates to witnesses. A copy of such order is annexed hereto as Exhibit E. Both said orders of November 16 and 23 were made without notice to the petitioners and prior to the service of the aforesaid subpoenas.

7. On December 14, 1959 each petitioner, together with certain other persons, moved to quash the aforesaid subpoenas. A copy of such motion is annexed hereto as Exhibit F. The grounds for such motion were as follows:

> (a) A District Judge or a District Court lacks jurisdiction and power to issue a subpoena on behalf of the demanding country in an extradition proceeding;

[fol. 301] (b) An extradition proceeding is civil in nature and the District Judge or District Court has no jurisdiction or power to issue a subpoena commanding the appearance in Florida of witnesses served outside of the district and more than 100 miles from the place of hearing; and

(c) Compliance with the subpoenas would be burdensome and oppressive.

8. On December 15, 1959 an order was made by The Honorable William C. Mathes, United States District Judge, denying the motion to quash the subpoenas and modifying the subpoenas in certain respects. A copy of such order is annexed hereto as Exhibit G.

9. On January 4, 1960 an order was made by The Honorable William C. Mathes, adjourning the return date of the aforesaid subpoenas to January 27, 1960. Judge Mathes refused to adjourn the return date indefinitely pending the hearing and determination of the appeal referred to in Paragraph 12 below.

10. It is respectfully submitted that the issuance of the said subpoenas was an assertion of nonexistent power and exceeded the jurisdiction of a District Judge or a District Court for the reasons that the subpoena power cannot be exercised on behalf of the demanding country in an extradition proceeding, and, in any event, the court has no power to issue in such proceeding a subpoena for service upon a witness outside the district and not within 100 miles of the place of hearing. Accordingly, the District Judge or District Court should be directed by this Court to vacate the order entered on December 15, 1959 and to quash the aforesaid subpoenas.

11. It is also respectfully submitted that the issuance of a writ of prohibition or mandamus is the proper remedy to compel the District Judge or District Court to refrain from exceeding his or its power and jurisdiction.

12. Petitioners have also taken an appeal from the order of Judge Mathes entered on December 15, 1959. It is re-

spectfully requested that this Court hear argument on such appeal and on this petition at the same time.

[fol. 302] Wherefore, petitioners pray that a writ of prohibition or mandamus issue, directing the Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, to vacate and set aside the order entered on December 15, 1959 and referred to in Paragraph 8 above, to make an order quashing the aforesaid subpoenas, to cease and refrain from issuing subpoenas on behalf of the demanding country in the aforesaid extradition proceeding and for such other and further relief as may be just.

Dated at Miami, Florida this 14th day of January, 1960.

The First National City Bank of New York, By Shearman & Sterling & Wright, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; French American Banking Corporation, By Coudert Brothers, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey; The Royal Bank of Canada, By Sage, Gray, Todd & Sims, and Fowler, White, Gillen, Humkey & Trenam, By Walter Humkey, 401 Industrial National Bank Building, Miami, Florida.

Duly sworn to by Walter Humkey, jurat omitted in printing.

[fol. 303] Certificate of service (omitted in printing).

[fol. 304]

EXHIBIT A TO PETITION

Subpoena to The First National City Bank (George F. Nolte) and return on service and Schedule omitted. Printed on page 23, side folio 42, ante.

[fol. 307]

EXHIBIT B TO PETITION

Subpoena to French American Banking Corporation (Walter Anderson) and return on service and Schedule omitted. Printed on page 26, side folio 47, ante.

[fol. 311]

EXHIBIT C TO PETITION

Subpoena to Royal Bank of Canada (J. W. Ganaan) and return on service and Schedule omitted. Printed on page 30, side folio 53, ante.

[fol. 314]

EXHIBIT D TO PETITION

Order vacating notice of taking deposition, etc., dated November 13, 1959 omitted. Printed on page 2, side folio 2, ante.

[fol. 316]

EXHIBIT E TO PETITION

Order vacating order dated November 13, 1959, etc. (copy) omitted. Printed on page 3, side folio 4, ante.

[fol. 317]

EXHIBIT F TO PETITION

Motion of The First National City Bank of New York, et al. to quash omitted. Printed on page 6, side folio 9, ante.

[fol. 319]

EXHIBIT G TO PETITION

Order on hearing of December 14, 1959 granting modification of subpoenas and denying motions omitted. Printed on page 10, side folio 15, ante.

[fol. 357] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR FIFTH CIRCUIT

No. 18176

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan corporation, Petitioners,

v.

MANUEL ARISTEGUITA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

MOTION OF FORTUNATO HERRARA, ET AL., FOR LEAVE TO FILE PETITION FOR WRIT OF PROHIBITION OR STAY OF PROCEEDINGS PENDING APPEAL, WITH PETITION ATTACHED—Filed January 20, 1960

Come Now Fortunato Herrara and Polinversiones, C.A., a Venezuelan corporation, and respectfully move the Court for leave to file their petition for writ of prohibition or stay of further proceedings as to them pending appeal as follows:

I. Your petitioners, Fortunato Herrara and Polinversiones, C.A., a Venezuelan corporation, respectfully show unto the Court that they are depositors and owners of certain bank accounts in divers New York City banks named in the extradition proceedings below, viz., First National City Bank, French American Banking Corporation and Royal Bank of Canada, each of New York City, New York, whose records of deposits and withdrawals have been ordered produced before the United States District Court for the Southern District of Florida, Miami Division, under order of January 4, 1960, and subpoenas issued and served upon said banks prior to said order, all of which affirmatively appear on the record of proceedings in the lower court extradition proceeding which has been duly filed in this Court in the appeal styled The First National City Bank of New York, The French American Banking Cor-

poration and The Royal Bank of Canada, appellants, vs. [fol. 358] Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, appellee, reference to which is hereby prayed, said record being hereby adopted for the purposes hereof.

II. Petitioners not being parties to the lower court proceeding, upon being advised that bank records pertaining to their private bank accounts in the aforesaid banks had been subpoenaed by the above designated court, appeared before said court in said extradition proceeding pursuant to notice, on January 4, 1960, and submitted their motion to quash said subpoenas, as per copy hereto attached as "Appendix A" and specifically made a part hereof. "Appendix B" reflects subpoena and "schedule" served upon one of said banks, identical subpoenas having been served upon each of said institutions.

III. At said hearing the court entertained and considered petitioners' motion, and by its order of January 4, 1960, denied said motion. Copy of said order is hereto attached as "Appendix C" and specifically made a part hereof.

IV. That under the aforesaid order, bank records pertaining to your petitioners' private bank accounts will be produced under compulsory process before the trial court, sitting as a magistrate in said extradition proceeding, on January 24, 1960, unless this Honorable Court intervenes to protect petitioners' rights and interests by issuance of an alternative writ of prohibition or rule to show cause pending a final hearing hereof, or in the alternative, an order directing a stay of further proceedings pending final hearing on appeal.

V. For the purpose of vesting jurisdiction in this Court to issue a stay order pending final hearing on appeal, should the Court elect such alternative method, these petitioners have duly entered their notice of appeal from the January 4, 1960 order aforesaid, per copy thereof attached as "Appendix D" and specifically made a part of this petition.

[fol. 359] VI. Petitioners would respectfully show unto the Court that Federal District Courts have only such subpoena power as is granted by the Constitution and Acts of Congress, and that nowhere is the power granted to the District Court sitting as a magistrate in an extradition proceeding to issue subpoenas or discovery process of any type. Such a hearing is not a suit of a civil nature, within the meaning of the Federal Rules of Civil Procedure, and in fact, has been defined as being the equivalent of a preliminary hearing before a committing magistrate. See *In re Extradition of Wadge*, 15 F. 874, Aff. 16 F. 332.

VII. Petitioners further show unto the Court that under *Title 18, U.S.C. 3184*, the sole function and power of a judge of a United States District Court following issuance of a warrant for the apprehension of a person charged with having committed a crime within the jurisdiction of a demanding foreign government, is to have the person so charged brought before him "to the end that the evidence of criminality may be heard and considered". The statute presupposes that the demanding government which has generated the filing of affidavit and complaint to bring about the arrest and extradition of the accused person, is in position to comply with the provisions of treaty and statute by submitting evidence of criminality of a quantum and quality sufficient to satisfy the magistrate that the evidence is sufficient to sustain the charge "under the provisions of the proper treaty or convention", and there exists no authority whatever for such committing magistrate to grant almost unlimited search and seizure process in aid of the petitioner's effort to seek out evidence of criminality in this country, or to grant to the plaintiff the equivalent of compulsory discovery process under our rules of procedure under which to conduct a veritable fishing expedition into the records of many banks of this country, not to [fol. 360] procure a particular witness or a particular paper as a part of plaintiff's proof, but in a secondary and corollary effort to determine under what name or in what bank the defendant deposited or secreted that which the warrant charges he embezzled in the demanding foreign jurisdiction. In this regard the plaintiff, having filed "evidence of

criminality", then seeks to misuse extradition procedure as a vehicle for prying and delving into the private bank accounts and business records of many persons and corporations, which is wholly impertinent and irrelevant to the limited function and duty of the magistrate to determine upon evidence of criminality in such special and limited proceeding.

VIII. Petitioners further say that unless this Honorable Court exercises its appellate and supervisory jurisdiction to prevent an unprecedented and improper invasion of petitioners' rights and interests in the premises, petitioners will have no remedy whatever and the damage and injury now apprehended will be imposed upon them since in extradition cases involving a fugitive from justice of a foreign country, the judge or magistrate acts under special authority conferred by treaties and Acts of Congress in that limited field only, and no appeal from his decision is given by the law under which he acts. See *Collins* v. *Miller*, 40 S. Ct. 347, 252 U. S. 364, 64 L. Ed. 616; *In re Kene's Extradition*, D.C. Tex. 1934, 6 F. Supp. 308; 10 Op. Atty. Gen. 501. Hence, since an extradition proceeding stands almost alone in the jurisprudence of the country in denying both parties a right of appeal from whatever may be the final judgment of the magistrate, petitioners say that the instant attempt on their part to restrain an unjust and unprecedented search and invasion into their private rights and private property by process issued by the district judge in a case in which they are not even parties and in which they have not even been subpoenaed as witnesses is the sole [fol. 361] method afforded petitioners by the law of the land to prevent the execution of an oppressive and highly improper order of a court acting in excess of its lawful jurisdiction.

Wherefore, petitioners pray that this Honorable Court issue its writ of prohibition directing the Honorable William C. Mathes, acting as Judge of the United States District Court for the Southern District of Florida, Miami Division, to proceed no further in the extradition action hereinabove described in so far as same, or any subpoena or order therein, requires information, testimony or rec-

ords of or from any party whomsoever pertaining to the private bank accounts of petitioners in The First National City Bank of New York, or The French American Banking Corporation of New York, or The Royal Bank of Canada, New York branch, pending final hearing hereof, and that upon such final hearing the Court issue its writ of prohibition, permanently prohibiting such further proceedings against these petitioners as same involve or pertain to their private bank accounts in the aforenamed New York banking establishments.

In the alternative, petitioners pray that this Honorable Court will, in the exercise of its appellate and supervisory jurisdiction, issue an order directing a stay and abatement of any and all further proceedings against them pending final hearing upon the appeal of which petitioners have given due notice, in so far as such further proceedings would involve, affect or reveal petitioners' private business affairs or facts or records pertaining to their private bank accounts aforesaid.

Richard H. Hunt, 704 Ainsley Building, Miami 32, Florida, Attorney for Fortunato Herrara and Polinversiones, C.A.

[fol. 362] *Duly sworn to by Richard H. Hunt, jurat omitted in printing.*

[fol. 363] APPENDIX A TO MOTION

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

v.

MARCOS PEREZ JIMENEZ, Defendant.

MOTION TO QUASH—Filed December 28, 1959

FORTUNATO HERRARA and POLINVERSIONES, C.A., by and through their undersigned attorney, move this court for an order quashing the subopenas duces tecum served upon George F. Nolte, Assistant Vice-President, First National City Bank of New York, New York; Walter Anderson, Secretary, French American Banking Corporation, New York City, New York; Isaac B. Grainger, President, Chemical Corn Exchange Bank, New York City, New York; J. W. Ganaan, Agent, Royal Bank of Canada, New York City, New York, and Wallace M. Davis, President, The Hibernia National Bank of New Orleans, Louisiana, requiring the production of documents, records, and other materials contained in the account or accounts of Fortunato Herrara and Polinversiones, C.A., at the foregoing respective banks, originally returnable before this court on Monday, December 14, 1959, at 10:00 a.m., and subsequently continued until January 4, 1960, at 10:00 a.m., by order dated December 15, 1959. Fortunato Herrara and Polinversiones, C.A., file this pleading solely for the purpose of moving to suppress or quash the subpoenas, and solely to suppress or quash those portions of the subpoenas pertaining to the account or accounts of Fortunato Herrara and Polinversiones, C.A. This motion does not constitute a general appearance

[fol. 364] by either moving party, nor a submission to the jurisdiction of this court for any purpose other than a special appearance to argue this particular motion. Grounds for the motion are as follows:

1. Neither Fortunato Herrara nor Polinversiones, C.A., is a party to this proceeding. The subpoenas duces tecum referred to above attempt to require the named banks to produce the records of account which are the personal and private property of the moving parties, and to which they claim a right of privacy and privilege.

2. The subpoenas duces tecum were properly served, and were served in New York City, New York, which is outside this district at a distance of more than 100 miles therefrom.

3. This cause is an extradition proceeding and this court has no jurisdiction to obtain by subpoena power the persons and records sought to be obtained by said subpoenas duces tecum.

4. The documents, records, and other materials contained in the account or accounts of Fortunato Herrara and Polinversiones, C.A., are not material or relevant to this cause.

5. Said subpoenas duces tecum, and each of them, in so far as they pertain to these petitioners, are in the nature of a fishing expedition into the personal affairs of a person not a party to this cause.

/s/ Richard N. Hunt
Attorney for Fortunato Herrara and
Polinversiones, C.A.

I Hereby Certify that a copy of the foregoing Motion to Quash was mailed to: Ward & Ward, Attorneys for Plaintiff, DuPont Building, Miami, Florida; Walters, Moore & Constanzo, Attorneys for Defendant, 1008 Ainsley Building, Miami, Florida, and Fowler, White, Gillen, Humkey & Trenam, Attorneys for The First National City Bank of New York, French American Banking Corporation, and Royal Bank of Canada, 401 Industrial National Bank Building, Miami, Florida, this 24 day of December, 1959.

/s/ Richard N. Hunt

[fol. 365]

APPENDIX B TO MOTION

Subpoena served on George F. Nolte and schedule (copy) omitted. Printed on page 23, side folio 42, ante.

[fol. 369]

APPENDIX C TO MOTION

Order after hearing of January 4, 1960 on motions to quash subpoenas, motions to extend the return day of subpoenas, and other matters (copy) omitted. Printed on page 17, side folio 26, ante.

[fol. 387] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

18176

SILVIO GUTIERREZ, Petitioner,

—against—

THE HONORABLE WILLIAM C. MATHES, United States District Judge and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS—
Filed January 20, 1960

To the Honorable Chief Judge and Judges of the United States Court of Appeals for the Fifth Circuit:

The petition of Silvio Gutierrez against The Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, respectfully shows:

1. The Chemical Corn Exchange Bank, New York, in which the petitioner has been at all relevant times a de-

positor, was served with a subpoena duces tecum in New York City on or about December 3, 1959.

2. The subpoena was addressed to Isaac B. Grainger, President of the Chemical Corn Exchange Bank in New York City and required appearance before the United States District Court for the Southern District of Florida, Miami Division, and the production of records of the bank account of petitioner and other named persons and entities for the period March 14, 1949 to November 25, 1959. Such records include copies of checks, drafts, bills of exchange, deposit and withdrawal slips, statements of account and all related correspondence. A copy of the subpoena served on Chemical Corn Exchange Bank is annexed hereto as Exhibit "A".

3. The subpoena states that it is issued on motion of the plaintiff (the diplomatic representative of the demanding country in a proceeding for extradition under Section 3184 of Title 18, U. S. Code, and pursuant to the Treaty of Extradition between the United States and Venezuela (43 Stat. 1698 (1923)).

4. The extradition proceeding referred to in Paragraph 3 above is entitled Manuel Aristequieta, Consul General of [fol. 388] the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff, v. Marcos Perez Jimenez, Defendant, and was commenced on or about August 24, 1959 by the filing of a complaint with the United States District Court for the Southern District of Florida, Miami Division. Such complaint seeks the extradition of Marcos Perez Jimenez on the grounds of complicity in homicides, extortion, bribery, illicit enrichment, embezzlement and criminal malversation.

5. On December 11, 1960 petitioner moved to quash the subpoena. A copy of this motion is annexed as Exhibit "B". The grounds for the motion are as follows:

> (1) Silvio Gutierrez is not a party to this proceeding. The subpoena duces tecum referred to above attempts to require the bank to produce the records of account which are his personal and private property, to which he has a right of privacy and privilege.

(2) The production of these personal and private records of Silvio Gutierrez will be likely to prejudice him and members of his family in that it would be likely to lead to reprisals against them by the Venezuelan Government which is represented by the plaintiff in this suit.

(3) This cause is an extradition proceeding in which this Court has no jurisdiction to issue a subpoena duces tecum at the request of or in behalf of the demanding country, the plaintiff.

(4) The documents, records and other materials contained in the account or accounts of Silvio Gutierrez are not material or relevant to this cause.

(5) The subpoena was improperly served since it appears on its face that it was served at a place outside the district in which the hearing is to be held and at a distance greater than 100 miles from the place of the hearing.

6. On December 15, 1959 an order was made by The Honorable William C. Mathes, United States District Judge, denying the motion to quash the subpoenas and modifying [fol. 389] the subpoenas in certain respects. A copy of this order is annexed as Exhibit "C".

7. On January 4, 1960 an order was made by The Honorable William C. Mathes, adjourning the return date of the aforesaid subpoena to January 27, 1960. Judge Mathes refused to adjourn the return date indefinitely pending the hearing and determination of the appeal of petitioner referred to in Paragraph 10 below.

8. It is respectfully submitted that the issuance of the subpoena was an assertion of nonexistent power and exceeded the jurisdiction of a District Judge or a District Court for the reasons that the subpoena power cannot be exercised on behalf of the demanding country in an extradition proceeding, and, in any event, the court has no power to issue in such proceeding a subpoena for service upon a witness outside the district and not within 100 miles of the place of hearing. Accordingly, the District Judge or Dis-

trict Court should be directed by this Court to vacate the order entered on December 15, 1959 and to quash the aforesaid subpoena.

9. It is also respectfully submitted that the issuance of a writ of prohibition or mandamus is the proper remedy to compel the District Judge or District Court to refrain from exceeding his or its power and jurisdiction.

10. Petitioner has taken appeal from the order of Judge Mathes entered on December 15, 1959. It is respectfully requested that this Court consider such appeal and this petition at the same time.

Wherefore, petitioner prays that a writ of prohibition or mandamus issue, directing the Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, to vacate and set aside the order entered on December 15, 1959 and referred to in Paragraph 6 above, to make an order quashing the aforesaid subpoena, to cease and refrain from issuing subpoenas on behalf of the demanding country in the aforesaid extradition proceeding and for such other and further relief as may be just.

[fol. 390] Dated at Miami, Florida this 19 day of January, 1960.

Silvio Gutierrez by Smathers, Thompson & Dyer,
By Samuel A. Brodnax, Jr.

Duly sworn to by Samuel A. Brodnax, Jr., jurat omitted in printing.

Certificate of service (omitted in printing).

[fol. 408]

EXHIBIT A TO PETITION

THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

FILED MIAMI, FLA.
DEC. 14, 1959
JULIAN A. BLAKE, CLERK

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, Plaintiff,

vs.

MARCOS PEREZ JIMENEZ, Defendant.

SUBPOENA

To: ISAAC B. GRAINGER, President
Chemical Corn Exchange Bank
165 Broadway
New York 15, N. Y.

On motion of the plaintiff supported by affidavit in this cause, a proceeding on complaint for extradition under Section 3184 of Title 18 of United States Code, and pursuant to such section and to the Treaty of Extradition between the United States and the Republic of Venezuela,

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Southern District of Florida, Miami Division, at the Federal Building, 300 N. E. 1st Avenue, City of Miami, Florida, on the 14th day of December, 1959, at 10:00 o'clock a.m. and bring with you the documents, records and other materials specified in the attached schedule; PROVIDED that such appearance need not

be made if, prior to December 14, 1959, such documents, records, and other materials are made available to counsel for the plaintiff, and are similarly made available to counsel for the defendant if counsel for the defendant so desires, for inspection, copying and the taking of copies.

If counsel for the plaintiff or defendant take copies of any documents, records or other materials with respect to the accounts of any of the following:

Napoleon Dupouy
Laureano Vallenilla Lanz
Luis Felipe Llovera Paez
Carlos Pulido Barreto
Fortunato Herrera (Haddad)
Silvio Gutierrez
Pedro A. Gutierrez Alfaro
Lola T. Gutierrez Alfaro
Pedro A. Peters
Virgil C. Applewhite
Polinversiones, C. A.
Edificio Washington, C. A.

[fol. 409] the contents of such copies shall not be disclosed by such counsel to any person other than the Plaintiff or the Defendant herein without further order of this Court, except as may be necessary in the course of offering any such matter in evidence in this proceeding or in the course of preparing copies thereof for the purpose of such offer.

November 25, 1959

/s/ Wm. C. Mathes
U. S. District Judge

Return on Service

Received this subpoena at New York City on Nov. 30, 1959 and on Dec. 3, 1959 at 165 Broadway served it on the within named Isaac B. Grainger, Pres. by (illegible) by delivering a copy to him and tendering to him the fee for one

Marilyn Ryan, Sec't.

day's attendance and the mileage allowed by law. (Chk. $119.68).

Dated:
December 3, 1959

/s/ THOMAS J. LURNEY
U.S. Marshal

By /s/ HARRY J. CARITO
Deputy

Service Fees
Travel $
Services

Total $

SUBSCRIBED AND SWORN TO before me, a this 4th day of December, 1959.

/s/ FRANK P. COSTA
Notary Public
Commission Expires March 30, 1960
(SEAL)

U.S. Marshal
S.D.N.Y.
Fees .50
Mileage .30
.80

[fol. 410]

SCHEDULE

1. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) drawn from March 14, 1949, to November 25, 1959 (inclusive) against each account maintained in the Chemical Corn Exchange Bank in the name of for the benefit of any person or entity listed in paragraph 6.

2. Photostatic or photographic copies of all checks, drafts and bills of exchange (both sides) deposited or credited from March 14, 1949, to November 25, 1959 (inclusive) to each account maintained in the Chemical Corn

Exchange Bank in the name or for the benefit of any person or entity listed in paragraph 6.

3. Originals or copies of all statements of account (bank statements) and advices of balance, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the Chemical Corn Exchange Bank in the name or for the benefit of any person or entity listed in paragraph 6.

4. Originals or copies of all deposit slips and all memoranda, acknowledgments or notations of deposit, credit, transfer or withdrawal, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the Chemical Corn Exchange Bank in the name or for the benefit of any person or entity listed in paragraph 6.

5. Originals or copies of all internal and external instructions, correspondence and other records or written communications, and all records of any oral communications, from March 14, 1949, to November 25, 1959 (inclusive), with respect to each account maintained in the Chemical Corn Exchange Bank in the name or for the benefit of any person or entity listed in paragraph 6.

6. The following persons and entities, without regard to any variation between the following names and the style of any account in which one or more of these names appear, and without regard to the joint or fiduciary character of any account:

Marcos Perez Jimenez

Flor Chalbaud de Perez Jimenez

Margot Perez Chalbaud

Florangel Perez Chalbaud

Maria Sol Perez Chalbaud

Flor de Maria Perez Chalbaud

Rosa Perez Jimenez de Vargas

Francisco Perez Jimenez

Juan Perez Jimenez

Napoleon Dupouy

Laureano Vallenilla Lanz

Luis Felipe Llovera Paez

Carlos Pulido Barreto

Fortunato Herrera (Haddad)

Silvio Gutierrez

Pedro A. Gutierrez Alfaro

Lola T. Gutierrez Alfaro

Pedro A. Peters

Virgil C. Applewhite

Polinversiones, C. A.

Edificio Washington, C.A.

7. The foregoing paragraphs shall not require the production of documents, records, memoranda, correspondence or other materials that are in a foreign country.

I certify the foregoing to be a true
and correct copy of the original.

Julian A. Blake, Clerk
United States District Court
Southern District of Florida

By: /s/ ELEANOR A. MCGINTY
Deputy Clerk

(SEAL)

[fol. 411]

EXHIBIT B TO PETITION

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

FILED, MIAMI, FLA.
DEC. 11, 1959
JULIAN A. BLAKE, CLERK

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

vs.

MARCOS PEREZ JIMENEZ, Defendant.

MOTION TO QUASH

SILVIO GUTERREZ, by and through his undersigned attorneys, moves this Court for an order quashing the subpoena duces tecum served upon Isaac B. Grainger, President, Chemical Corn Exchange Bank, New York, New York, requiring the production of documents, records and other materials contained in the account or accounts of Silvio Gutierrez at that bank, returnable before this Court on Monday, December 14, 1959 at 10:00 A. M. Silvio Gutierrez files this pleading solely for the purpose of moving to suppress or quash the subpoena and solely to suppress or quash the portion of the subpoena pertaining to the account or accounts of Silvio Gutierrez. Grounds for the motion are as follows:

1. Silvio Gutierrez is not a party to this proceeding. The subpoena duces tecum referred to above attempts to require the bank to produce the records of account which are his personal and private property, to which he has a right of privacy and privilege.

2. The production of these personal and private records of Silvio Gutierrez will be likely to prejudice him and members of his family in that it would be likely to lead to reprisals against them by the Venezuelan Government which is represented by the Plaintiff in this suit.

3. This cause is an extradition proceeding in which this Court has no jurisdiction to issue a subpoena duces tecum at the request of or in behalf of the demanding country, the Plaintiff.

[fol. 412] 4. The documents, records and other materials contained in the account or accounts of Silvio Gutierrez are not material or relevant to this cause.

5. The subpoena was improperly served since it appears on its face that it was served at a place outside the district in which the hearing is to be held and at a distance greater than 100 miles from the place of the hearing.

SMATHERS, THOMPSON & DYER

By SAMUEL A. BRODNAX, JR.
Attorneys for Silvio Gutierrez

I HEREBY CERTIFY that a true copy of the foregoing Motion was delivered to Ward and Ward, DuPont Building, Miami, Florida and Walters, Moore & Constanzo, 1008 Ainsley Building, Miami, Florida, and mailed to Covington & Burling, 701 Union Trust Building, Washington, D. C. on December 11, 1959.

SAMUEL A. BRODNAX, JR.
Of Counsel

[SEAL]

I certify the foregoing to be a true
and correct copy of the original.

Julian A. Blake, Clerk
United States District Court
Southern District of Florida

By: /s/ ELEANOR A. McGINTY
Deputy Clerk

[fol. 427] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

18176

NAPOLEON DUPOUY, Petitioner,

v.

THE HONORABLE WILLIAM C. MATHES, United States District Judge and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PETITION OF NAPOLEON DUPOUY TO FILE PETITION FOR WRIT OF PROHIBITION OR MANDAMUS—Filed January 22, 1960

To the Honorable Chief Judge and Judges of the United States Court of Appeals for the Fifth Circuit:

The petition of Napoleon Dupouy against The Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, respectfully shows:

1. The First National City Bank of New York and The French American Banking Corporation, in which the petitioner has been at all relevant times a depositor, were served with subpoenas duces tecum in New York City on or about December 14, 1959.

2. The subpoenas were addressed to George F. Nolte, Assistant Vice President of The First National City Bank of New York and to Walter Anderson, Secretary, The French American Banking Corporation and required appearance before the United States District Court for the Southern District of Florida, Miami Division, and the production of records of the bank accounts of petitioner and other named persons and entities for the period March 14, 1949 to November 25, 1959. Such records include copies of checks, drafts, bills of exchange, deposit and withdrawal slips, statements of account and all related correspondence.

A copy of the subpoena served on The First National City Bank of New York is annexed hereto as Exhibit A. A copy of the subpoena served on The French American Banking Corporation is annexed hereto as Exhibit B.

3. The subpoena, in each instance, states that it is issued on motion of the plaintiff (the diplomatic representative of the demanding country in a proceeding for extradition under Section 3184 of Title 18, U. S. Code, and pursuant to [fol. 428] the Treaty of Extradition between the United States and Venezuela (43 Stat. 1698 (1923)).

4. The extradition proceeding referred to in Paragraph 3 above is entitled Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff v. Marcos Perez Jimenez, Defendant, and was commenced on or about August 24, 1959 by the filing of a complaint with the United States District Court for the Southern District of Florida, Miami Division. Such complaint seeks the extradition of Marcos Perez Jimenez on the grounds of complicity in homicides, extortion, bribery, illicit enrichment, embezzlement and criminal malversation.

5. On December 11, 1960 petitioner moved to quash the subpoena. A copy of this motion is annexed as Exhibit C. The grounds for the motion are as follows:

> 1. The said subpoenas duces tecum were improperly served in that they were served in New York, N. Y. which is outside this district and more than 100 miles therefrom.
>
> 2. This cause is an extradition proceeding and this Court has no jurisdiction to obtain by subpoena power the persons and records sought to be obtained by said subpoena duces tecum.
>
> 3. The said subpoenas duces tecum, and each of them, seek to obtain records that in no way pertain to this cause and which cannot lead to the discovery of information relevant to this cause.

4. The said subpoenas duces tecum, and each of them, seek to obtain records that are in no way material to this cause and which cannot lead to the discovery of records material to this cause.

5. The said subpoenas duces tecum, and each of them, seek to obtain information not relevant to this cause and which is personal to petitioner and privileged.

6. The said subpoenas duces tecum, and each of them, insofar as they pertain to petitioner, are in the nature of a fishing expedition into the personal affairs of a person not a party to this cause.

6. On December 15, 1959 an order was made by The Honorable William C. Mathes, United States District Judge, denying the motion to quash the subpoenas and modifying the subpoenas in certain respects. A copy of this order is annexed as Exhibit D.

[fol. 429] 7. On January 4, 1960 an order was made by The Honorable William C. Mathes, adjourning the return date of the aforesaid subpoenas to January 27, 1960. Judge Mathes refused to adjourn the return date indefinitely pending the hearing and determination of the appeal of petitioner referred to in Paragraph 10 below.

8. It is respectfully submitted that the issuance of the subpoena was an assertion of nonexistent power and exceeded the jurisdiction of a District Judge or a District Court for the reasons that the subpoena power cannot be exercised on behalf of the demanding country in an extradition proceeding, and, in any event, the court has no power to issue in such proceeding a subpoena for service upon a witness outside the district and not within 100 miles of the place of hearing. Accordingly, the District Judge or District Court should be directed by this Court to vacate the order entered on December 15, 1959 and to quash the aforesaid subpoena.

9. It is also respectfully submitted that the issuance of a writ of prohibition or mandamus is the proper remedy to

compel the District Judge or District Court to refrain from exceeding his or its power and jurisdiction.

10. Petitioner has taken appeal from the order of Judge Mathes entered on December 15, 1959. It is respectfully requested that this Court consider such appeal and this petition at the same time.

Wherefore, petitioner prays that a writ of prohibition or mandamus issue, directing the Honorable William C. Mathes, United States District Judge, and the United States District Court for the Southern District of Florida, Miami Division, to vacate and set aside the order entered on December 15, 1959 and referred to in Paragraph 6, above, to make an order quashing the aforesaid subpoenas, to cease and refrain from issuing subpoenas on behalf of the demanding country in the aforesaid extradition proceeding and for such other and further relief as may be just.

Dated at Miami, Florida, this 21st day of January, 1960.

Napoleon Dupouy, by Scott McCarthy Preston Steel & Gilleland, By Dwight Sullivan, 1414 First National Bank Bldg., Miami 32, Florida.

[fol. 430] *Duly sworn to by Dwight Sullivan, jurat omitted in printing.*

Certificate of service (omitted in printing).

[fol. 439]

EXHIBIT C TO PETITION

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

MANUEL ARISTEOVIETA, Consul General of the Republic of Venezuela, Plaintiff,

—vs—

MARCOS PEREZ JIMENEZ, Defendant.

MOTION TO QUASH
SUBPOENA DUCES TECUM

Comes now NAPOLEON DUPOUY, by and through his undersigned attorneys, and moves this Court for an order quashing the subpoenas duces tecum served in this cause upon the French American Banking Corporation and the First National City Bank of New York, insofar as said subpoenas duces tecum pertain to him, on the following grounds:

1. The said subpoenas duces tecum were improperly served in that they were served in New York, N. Y. which is outside this district and more than 100 miles therefrom.

2. This cause is an extradition proceeding and this Court has no jurisdiction to obtain by subpoena power the persons and records sought to be obtained by said subpoenas duces tecum.

3. The said subpoenas duces tecum, and each of them, seek to obtain records that in no way pertain to this cause and which cannot lead to the discovery of information relevant to this cause.

4. The said subpoenas duces tecum, and each of them, seek to obtain records that are in no way material to this cause and which cannot lead to the discovery of records material to this cause.

5. The said subpoenas duces tecum, and each of them, seek to obtain information not relevant to this cause and which is personal to petitioner and privileged.

[fol. 439a] 6. The said subpoenas duces tecum, and each of them, insofar as they pertain to petitioner, are in the nature of a fishing expedition into the personal affairs of a person not a party to this cause.

SCOTT MCCARTHY PRESTON STEEL & GILLELAND

By .....
Dwight Sullivan
Attorneys for Petitioner, Napoleon Dupouy
1414 First National Bank Building
Miami 32, Florida

I HEREBY CERTIFY that a copy of the foregoing was delivered to each of the following: WARD & WARD, Attorneys for Plaintiff; WALTERS, MOORE & COSTANZO, Attorneys for Defendant; WALTER HUMKEY, Attorney for French American Banking Corporation and the First National City Bank of New York; SMATHERS, THOMPSON & DYER, Attorneys for Silvio Gutierrez; this 11th day of December, 1959.

.....
Attorney

[fol. 465]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO,
Petitioners,

—vs.—

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela,
Respondent.

MOTION OF PEDRO A. GUITERREZ ALFARO, ET AL., FOR LEAVE TO FILE PETITION FOR WRIT OF PROHIBITION OR STAY OF PROCEEDINGS PENDING APPEAL, WITH PETITION ATTACHED—Filed January 22, 1960

Come Now Pedro A. Guiterrez Alfaro and Lola T. de Guitterrez Alfaro, also known as Lola T. de Guiterrez Alfaro and respectfully move the Court for leave to file their petition for writ of prohibition or stay of further proceedings as to them pending appeal as follows:

I. Your petitioners, Pedro A. Guiterrez Alfaro and Lola T. de Guitterrez Alfaro, also known as Lola T. Guiterrez Alfaro, respectfully show unto the Court that they are depositors and owners of certain bank accounts in a certain New York City bank named in the extradition proceedings below, viz., First National City Bank, of New York City, New York, whose records of deposits and withdrawals have been ordered produced before the United States District Court for the Southern District of Florida, Miami Division, under order of January 4, 1960, and subpoenas issued and served upon said bank prior to said order, all of which affirmatively appear on the record of proceedings in the lower court extradition proceeding which has been duly [fol. 465a] filed in this Court in the appeal styled The First National City Bank of New York, The French American

Banking Corporation and The Royal Bank of Canada, appellants, vs. Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, appellee, reference to which is hereby prayed, said record being hereby adopted for the purposes hereof.

II. Petitioners not being parties to the lower court proceeding, upon being advised that bank records pertaining to their private bank accounts in the aforesaid bank had been subpoenaed by the above designated court, appeared before said court in said extradition proceeding pursuant to notice, on January 4, 1960, and submitted their motion to quash said subpoenas, as per copy hereto attached as "Appendix A" and specifically made a part hereof. "Appendix B" reflects subpoena and "schedule" served upon said bank, identical subpoenas having been served upon each of said institutions.

III. At said hearing the court entertained and considered petitioners' motion, and by its order of January 4, 1960, denied said motion. Copy of said order is hereto attached as "Appendix C" and specifically made a part hereof.

IV. That under the aforesaid order, bank records pertaining to your petitioners' private bank accounts will be produced under compulsory process before the trial court, sitting as a magistrate in said extradition proceedings, on January 24, 1960, unless this Honorable Court intervenes to protect petitioners' rights and interests by issuance of an alternative writ of prohibition or rule to show cause pending a final hearing hereof, or in the alternative, an order directing a stay of further proceeding pending final [fol. 466] hearing on appeal.

V. For the purpose of vesting jurisdiction in this Court to issue a stay order pending final hearing on appeal, should the Court elect such alternative method, these petitioners have duly entered their notice of appeal from the January 4, 1960 order aforesaid, per copy thereof attached as "Appendix D" and specifically made a part of this petition.

VI. Petitioners would respectfully show unto the Court that Federal District Courts have only such subpoena power as is granted by the Constitution and Acts of Congress, and that nowhere is the power granted to the District Court sitting as a magistrate in an extradition proceeding to issue subpoenas or discovery process of any type. Such a hearing is not a suit of a civil nature, within the meaning of the Federal Rules of Civil Procedure, and in fact, has been defined as being the equivalent of a preliminary hearing before a committing magistrate. See *In re Extradition of Wadge*, 15 F. 874, Aff. 16 F. 332.

VII. Petitioners further show unto the Court that under Title 18, U.S.C. 3184, the sole function and power of a judge of a United States District Court following issuance of a warrant for the apprehension of a person charged with having committed a crime within the jurisdiction of a demanding foreign government, is to have the person so charged brought before him "to the end that the evidence of criminality may be heard and considered". The statute presupposes that the demanding government which has generated the filing of affidavit and complaint to bring about the arrest and extradition of the accused person, is in position to comply with the provisions of treaty and statute by submitting evidence of criminality of a quantum and quality [fol. 467] sufficient to satisfy the magistrate that the evidence is sufficient to sustain the charge "under the provisions of the proper treaty or convention", and there exists no authority whatever for such committing magistrate to grant almost unlimited search and seizure process in aid of the petitioner's effort to seek out evidence of criminality in this country, or to grant to the plaintiff the equivalent of compulsory discovery process under our rules of procedure under which to conduct a veritable fishing expedition into the records of many banks in this country, not to procure a particular witness or a particular paper as a part of plaintiff's proof, but in a secondary and corollary effort to determine under what name or in what bank the defendant deposited or secreted that which the warrant charges he embezzled in the demanding foreign jurisdiction. In this regard the plaintiff, having filed "evidence of criminality",

then seeks to misuse extradition procedure as a vehicle for prying and delving into the private bank accounts and business records of many persons and corporations, which is wholly impertinent and irrelevant to the limited function and duty of the magistrate to determine upon evidence of criminality in such special and limited proceeding.

VIII. Petitioners further say that unless this Honorable Court exercises its appellate and supervisory jurisdiction to prevent an unprecedented and improper invasion of petitioners' rights and interests in the premises, petitioners will have no remedy whatever and the damage and injury now apprehended will be imposed upon them since in extradition cases involving a fugitive from justice of a foreign country, the judge or magistrate acts under special authority conferred by treaties and Acts of Congress in that limited field only, and no appeal from his decision is given by the law [fol. 468] under the acts. See *Collins* v. *Miller*, 40 S. Ct. 347, 252 U.S. 364, 64 L.Ed. 616; *In re Kene's Extradition*, D. C. Tex. 1934, 6 F. Supp. 308; 10 Op. Atty. Gen. 501. Hence, since an extradition proceeding stands almost alone in the jurisprudence of the country in denying both parties a right of appeal from whatever may be the final judgment of the magistrate, petitioners say that the instant attempt on their part to restrain an unjust and unprecedented search and invasion into their private rights and private property by process issued by the district judge in a case in which they are not even parties and in which they have not even been subpoenaed as witnesses is the sole method afforded petitioners by the law of the land to prevent the execution of an oppressive and highly improper order of a court acting in excess of its lawful jurisdiction.

Wherefore, petitioners pray that this Honorable Court issue its writ of prohibition directing the Honorable William C. Mathes, acting as Judge of the United States District Court for the Southern District of Florida, Miami Division, to proceed no further in the extradition action hereinabove described insofar as same, or any subpoena or order therein, requires information, testimony or records of or from any party whomsoever pertaining to the private bank accounts of petitioners in The First National City

Bank of New York, or The French American Banking Corporation of New York, pending final hearing hereof, and that upon such final hearing the Court issue its writ of prohibition, permanently prohibiting such further proceedings against these petitioners as same involve or pertain to their private bank accounts in the aforenamed New York banking establishment.

In the alternative, petitioners pray that this Honorable Court will, in the exercise of its appellate and supervisory [fol. 469] jurisdiction, issue an order directing a stay and abatement of any and all further proceedings against them pending final hearing upon the appeal of which petitioners have given due notice, insofar as such further proceedings would involve, affect or reveal petitioners' private business affairs or facts or records pertaining to their private bank accounts aforesaid.

L. J. Cushman, Attorney for Pedro A. Guiterrez Alfaro and Lola T. de Guitterrez Alfaro, also known as Lola T. de Guiterrez Alfaro.

AFFIDAVIT

State of Florida,
County of Dade, ss.:

Before the undersigned authority personally appeared L. J. Cushman, who being duly sworn, upon his oath says that he is attorney for each of the petitioners above named; that he has read the averments and allegations of the foregoing motion and petition, and that same are true and correct according to affiant's best knowledge, information and belief.

.....

Sworn to and Subscribed before me this day of January, 1960.

.....

Notary Public, State of Florida at Large.

My Commission Expires:

.....

[fol. 470] CERTIFICATE OF SERVICE

I Hereby Certify that a copy of the foregoing Motion for Leave to File Petition for Writ of Prohibition or Stay of Proceedings Pending Appeal, with Petition Attached, was furnished by (delivery) to each of the following:

Ward & Ward, DuPont Building, Miami 32, Florida, Attorneys for Plaintiff.

Smathers, Thompson & Dyer, DuPont Building, Miami 32, Florida, Attorneys for Silvio Gutierrez.

Scott, McCarthy, Preston Steel & Gilleland, 1414 First National Bank Building, Miami 32, Florida, Attorneys for Napoleon DePuoy.

Richard H. Hunt, 704 Ainsley Building, Miami 32, Florida, Attorney for Fortunato Herrara and Polinversiones, C.A.

Walters, Moore & Costanzo, 1008 Ainsley Building, Miami 32, Florida, Attorneys for Defendant.

Fowler, White, Gillen, Humkey & Trenam, 401 Industrial National Bank Building, Attorneys for The First National City Bank of New York, The French American Banking Corporation and The Royal Bank of Canada.

[fol. 471]

APPENDIX A TO MOTION

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 9425-M-Civil

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

—vs.—

MARCOS PEREZ JIMINEZ, Defendant.

MOTION TO QUASH—Filed December 31, 1959

PEDRO A. GUTIERREZ ALFARO and LOLA T. DE GUTTIERREZ ALFARO, also known as LOLA T. DE GUTIERREZ ALFARO, by and through their undersigned attorney, moves this court for an order quashing the subpoenas duces tecum served upon George F. Nolte, Assistant Vice-President, First National City Bank of New York, New York, requiring the production of documents, records, and other materials contained in the account or accounts of Pedro A. Gutierrez Alfaro and Lola T. de Guttierrez Alfaro, also known as Lola T. de Gutierrez Alfaro, at the foregoing bank, originally returnable before this court on Monday, December 14, 1959, at 10:00 a.m., and subsequently continued until January 4, 1960, at 10:00 a.m., by order dated December 15, 1959, and file this pleading solely for the purpose of moving to suppress or quash the subpoenas, and solely to suppress or quash those portions of the subpoenas pertaining to the account or accounts of Pedro A. Gutierrez Alfaro and Lola T. de Guttierrez Alfaro, also known as Lola T. de Gutierrez Alfaro. This motion does not constitute a general appearance by either moving party, nor a submission to the jurisdiction of this court for any purpose other than a special appearance to argue this particular motion. Grounds for the motion are as follows:

[fol. 472] 1. Neither Pedro A. Gutierrez Alfaro nor Lola T. de Guttierrez Alfaro, also known as Lola T. de Gutierrez Alfaro is a party to this proceeding. The subpoenas duces tecum referred to above attempt to require the named bank to produce the records of account which are the personal and private property of the moving parties, and to which they claim a right of privacy and privilege.

2. The subpoenas duces tecum were properly served, and were served in New York City, New York, which is outside this district at a distance of more than 100 miles therefrom.

3. This cause is an extradition proceeding and this court has no jurisdiction to obtain by subpoena power the persons and records sought to be obtained by said subpoenas duces tecum.

4. The documents, records, and other materials contained in the account or accounts of Pedro A. Gutierrez Alfaro and Lola T. de Guttierrez Alfaro, also known as Lola T. de Gutierrez Alfaro, are not material or relevant to this cause.

5. Said subpoenas duces tecum, and each of them, in so far as they pertain to these petitioners, are in the nature of a fishing expedition into the personal affairs of a person not a party to this cause.

/s/ L. J. Cushman
L. J. Cushman, Attorney for
Pedro A. Gutierrez Alfaro and Lola T. de Guttierrez, also known as Lola T. de Gutierrez Alfaro

I Hereby Certify that a copy of the foregoing Motion to Quash was delivered to: Ward & Ward, Attorneys for Plaintiff; Walters, Moore & Constanzo, Attorneys for Defendant, and Fowler, White, Gillen, Humkey & Trenam, Attorneys for the First National City Bank of New York, this 31st day of December, 1959.

/s/ L. J. Cushman

[fol. 492]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

FIRST NATIONAL CITY BANK OF NEW YORK, ET AL.,
Petitioners,

—v.—

MANUEL ARISTEGUIETA, CONSUL GENERAL OF THE REPUBLIC OF VENEZUELA, Respondent.

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE AND TO PARTICIPATE IN ORAL ARGUMENT AND BRIEF FOR THE UNITED STATES AS AMICUS CURIAE—Filed January 26, 1960

Malcolm R. Wilkey, Assistant Attorney General, moves the Court for leave to file the annexed brief on behalf of the United States as *amicus curiae* in the above-entitled case and for leave to present the Government's position on the oral argument of the cause.

The interest of the United States in the issues involved in this case stems from our treaty relations with other countries regarding the extradition of fugitives and the responsibility of this Government for the faithful execution of such treaties. In addition, the particular treaty involved in this case imposes upon the Government the obligation [fol. 493] of assisting the officers of Venezuela in an extradition proceeding "by every legal means" within the power of the Government (43 Stat. 1705).

Respectfully submitted,

Malcolm R. Wilkey, Assistant Attorney General,
Department of Justice, Washington 25, D.C.

[fol. 494]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

[Title omitted]

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The question as to whether a judge of a United States District Court has the power to issue a subpoena at the request of the demanding government in an extradition proceeding is not confined to the issues in this particular case, but involves as well considerations reaching the abilities of this Government to honor the stipulations of all treaties existing with friendly nations respecting the mutual exchange of fugitives. For that reason, the United States, with leave of this Honorable Court, brings the following considerations to the attention of the Court.

The Congress of the United States, exercising the undoubted right it has to use a wide discretion with respect to the means by which extradition treaties are to be executed, employed the judicial machinery to determine in the first instance whether probable cause is shown which will justify the holding of the accused ultimately to answer [fol. 495] to the charge in the foreign country. Even after the extradition judge certifies the sufficiency of the evidence to the Secretary of State, the Executive can refuse to surrender the fugitive. It is thus readily apparent that an extradition proceeding is not a trial since it decides nothing about the innocence or guilt of the accused. Rather, it is a proceeding to secure compliance with two requirements: (1) probable cause showing the commission of certain listed crimes, and (2) the identity of the person whose surrender is demanded.

When entrusting these duties to judicial officers, Congress invoked the aid of the judicial machinery with all of its attributes and powers. No rules of procedure were

prescribed, no limitations imposed. Thus, the extradition judge has a wide range of discretion. He determines all questions of practice, *In re Wadge*, 15 Fed. 864, 866 (S.D. N.Y. 1883), and his decisions are reviewable even in habeas corpus only as to jurisdiction, whether the offense charged was covered by the treaty and, by the most liberal extension, whether there was any evidence warranting finding reasonable ground to believe the accused guilty. *Fernandez* v. *Phillips*, 268 U.S. 311 (1925). Article XI of the Treaty here involved affirms this view by providing that "judicial functionaries shall prescribe the method of complying with the legal formalities of the country of which the extradition is requested."

Since the examining judge's powers and duties in the extradition process are concerned with the sufficiency of the evidence to show probable cause, it would be strange [fol. 496] indeed were he denied the right to issue compulsory process to bring whatever evidence he deems necessary before him for consideration. It is clear that examining magistrates in this country have long recognized and used this power, considering it a power so essential to their proper functions as would defeat their purpose and authority were it not vested in them.

That Congress assumed the subpoena power existed in extradition proceedings is apparent from the wording of 18 U.S.C. Sec. 3191, making provision for the summoning of witnesses on behalf of an indigent accused. This statute further provides that the costs incident thereto should be paid in the same manner as in the case of witnesses subpoenaed in behalf of the United States. Even in the absence of this statute, it would not be in keeping with our concept of fundamental fairness were an extradition accused deprived of the right to secure the attendance of a witness whose testimony is essential on his behalf. Similarly, to deny a sovereign nation access to the customary subpoena power of our courts to secure evidence bearing on the question of probable cause would be to deny the friendly sovereign a right always granted to the United States and to every accused, including the accused in this proceeding.

An extradition proceeding has no counterpart in our system of jurisprudence. In some respects, it is of the character of a preliminary examination before an examining or committing magistrate for the purpose of determining whether sufficient reason exists to hold the accused to answer to an indictment or information. Pur- [fol. 497] suant to the provisions of 18 U.S.C. Sec. 3041 a United States judge, unlike a state judge or magistrate, proceeds in these preliminary examinations according to the Federal Rules of Criminal Procedure, which permit subpoenas to be served anywhere in the United States. This demonstrates that the subpoena power is part of the judicial machinery which Congress has authorized to be used in extradition proceedings, for the Federal Rules do not confer substantive powers but merely set out the procedures for the utilization of these powers. The subpoenas here are signed by a United States District Judge; there is no foundation for a claim that a Federal judge has less power in an extradition proceeding than he has when he acts as a committing magistrate. As has been said, Congress did not place the extradition judge in a strait-jacket. Rather, he was given full powers, within constitutional limits, to control the procedures in extradition proceedings.

The United States is concerned here that the United States District judge have the necessary power properly to discharge the responsibility which is his in extradition proceedings. The standards of proof, of due process of law, and of all constitutional and procedural safeguards which he applies are the standards of the United States, not of the foreign demanding country. Article I of the Extradition Treaty of January 19, 1922, between the United States and Venezuela provides:

> Such surrender shall take place only upon such evidence of guilt as, according to the laws of the country in which the fugitive or accused shall be [fol. 498] found, would justify his detention and commitment for trial if the crime or offense had been committed there (43 Stat. 1698).

It would, the United States submits, be inconsistent with the judge's responsibility and this provision of the treaty to deny the judge access to all relevant information available within the United States. It would likewise be inconsistent with all other forms of judicial procedure to grant the existence of the judge's subpoena power on behalf of an indigent accused (18 U.S.C. 3191), or on behalf of any accused, and to deny the existence of a subpoena power on behalf of a friendly foreign sovereign desiring to bring relevant information before the judge to aid him in the discharge of his responsibility.

The United States suggests that, should this Honorable Court conclude that the District Judge in this case is empowered to issue compulsory process, such a conclusion would not adversely affect the rights of these appellants, and furthermore would enable the United States to expect reciprocally a liberal construction of local laws when demanding the return of fugitives from distant lands to this country.

Respectfully submitted,

Malcolm R. Wilkey, Assistant Attorney General,
Robert S. Erdahl, Harold P. Shapiro, Joseph J. Cella, Jr., Attorneys, Department of Justice.

January 1960.

[fol. 597]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEQUIETA, Counsel General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH-AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

[fol. 598]

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEQUIETA, Counsel General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

NAPOLEON DUPOUY, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO, Petitioners,

versus

[fol. 599]

MANUEL ARISTEGUIETA, Counsel General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

Appeal from the United States District Court for the Southern District of Florida and Motions for Leave to File Petitions for Writs of Prohibition or Mandamus.

ORDER—January 29, 1960

Before Rives, Chief Judge, and Hutcheson and Jones, Circuit Judges.

Per Curiam: The appeal of the First National Bank of New York, the French American Banking Corporation, and the Royal Bank of Canada from an order denying a motion to quash three subpoenas duces tecum, issued on behalf of the demanding country in the extradition proceedings first hereinabove styled, and the motions for leave to file petitions for writ of prohibition or mandamus in all the other captioned causes, were argued and heard together. It was stipulated upon oral argument that final judgment might be entered as if leave to file the petitions for writ of prohibition or mandamus had been granted and those cases had been heard on the merits.

The court has carefully read and considered the briefs together with the oral arguments and has reached a conclusion. In view of the need for expedition, that conclusion is announced without opinion.

[fol. 600] The court decides that the order denying motions to quash the subpoenas duces tecum is final and appealable. A majority of the court concludes that the said order should be reversed and the cause remanded with directions to quash the subpoenas duces tecum.

In view of the conclusions above announced, the petitions for the writ of prohibition or mandamus are denied.

The clerk is directed to enter judgments accordingly. Judge Rives thinks that the order should be affirmed, and, therefore, respectfully dissents.

[fol. 601]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

NAPOLEON DUPOUY, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

Appeal from the United States District Court for the Southern District of Florida and Motions for Leave to File Petitions for Writs of Prohibition or Mandamus.

Before Rives, Chief Judge, and Hutcheson and Jones, Circuit Judges.

JUDGMENT—January 29, 1960

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On Consideration Whereof, it is now here ordered and adjudged by this Court that the order of the said District Court denying the motions to quash the subpoenas duces tecum in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to quash the subpoenas duces tecum; and that the petitions for writ of prohibition or mandamus are denied.

It is further ordered and adjudged that the appellants, The First National City Bank of New York, French American Banking Corporation, and the Royal Bank of Canada recover their taxable costs in this Court from the appellee, Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela.

"Rives, Chief Judge, Dissenting."

January 29, 1960

[fol. 602]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela,
Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

FORTUNATO HERRERA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEGUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

MOTION OF APPELLEE MANUEL ARISTEQUIETA FOR CLARIFICATION OF ORDER FILED—February 1, 1960

It is requested that this Court clarify the basis of its order of January 29, 1960, reversing the orders appealed from.

The appellants argued, in this Court two propositions:

(a) A district court has no power to compel the attendance of witnesses and production of documents in aid of an extradition proceeding, nor does an extradition judge have any such power except in the cas of indigent defendants.

(b) In any event, the process of the district court or the district judge cannot run outside of the district for more than 100 miles from the place of hearing.

[fol. 603] Adoption of either proposition by this Court leads to reversal of the orders of the lower court.

If this Court based its decision solely on proposition (b), that leaves it open to the parties to proceed by deposition in New York under the Civil Rules as the appellee had originally attempted to do.

If this Court based its decision on (or also on) proposition (a), the proceeding below will take a quite different course.

It is most important that the parties and the lower court be advised of the basis of this Court's decision in order to promote expedition in the proceeding and to avoid the possibility of considerable expense being incurred under a misapprehension.

Clarification of the matter is also most pertinent to the question whether a petition for a writ of certiorari should be filed in the Supreme Court.

Respectfully submitted,

Howard C. Westwood, Covington & Burling, 701 Union Trust Building, Washington 5, D. C., Attorney for Appellee, Manuel Aristeguieta.

January 30, 1960

[fol. 604] Certificate of service (omitted in printing).

[fol. 612]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

NAPOLEON DUPOUY, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

ORDER DENYING MOTION FOR CLARIFICATION OF ORDER—February 4, 1960

Before Rives, Chief Judge, and Hutcheson and Jones, Circuit Judges.

Per Curiam:

The Motion for Clarification of the Order entered on January 29, 1960, is hereby denied.

February 4, 1960.

[fol. 613]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18,176

THE FIRST NATIONAL CITY BANK OF NEW YORK, THE FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Appellants,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of The Republic of Venezuela, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

ORDER TRANSMITTING RECORD, SUPPLEMENTAL RECORD AND ORIGINAL PAPERS NEEDED TO COMPLETE THE RECORD TO THE SUPREME COURT OF THE UNITED STATES—February 17, 1960

Order:

It Is Ordered that the Clerk be, and he is hereby authorized to transmit to the Supreme Court of the United States, the certified transcript of record and supplemental record, together with any other original paper or papers needed to complete the record for filing in that Court, in connection with an application for writ of certiorari in the above entitled and numbered cause.

Richard T. Rives, U. S. Circuit Judge.

February 17th, 1960.

[fol. 614] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 653]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

NAPOLEON DUPOUY, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

On Motion to Dismiss the Appeals of Fortunato Herrera, Polinversiones, C.A. (a Venezuelan corporation), Silvio Gutierrez, Napoleon Dupouy, Pedro A. Gutierrez Alfaro and Lola T. de Gutierrez Alfaro.

Before Rives, Chief Judge, and Hutcheson and Jones, Circuit Judges.

PER CURIAM ORDER OF JUDGE RIVES DENYING MOTION TO DISMISS—Filed March 28, 1960

This Court intended to and did decide on January 29, 1960, all five appeals pending in this cause; that is, the joint appeal by the First National City Bank of New York, French American Banking Corporation, and the Royal Bank of Canada, the appeal of Silvio Gutierrez, the appeal of Napoleon Dupouy, the appeal of Fortunato Herrera and Polinversiones, C.A., and the appeal of Pedro A. Gutierrez Alfaro and Lola T. de Gutierrez Alfaro. The Clerk is directed to issue a supplementary mandate so indicating. Since the appeals are no longer before this Court, the motion of Fortunato Herrera and Polinversiones, C.A. (a Venezuelan corporation), Silvio Gutierrez, Napoleon Dupouy, Pedro A. Gutierrez Alfaro and Lola T. de Gutierrez Alfaro to dismiss the appeal is Denied.

Enter for the Court this the 25th day of March, 1960.

Richard T. Rives, Chief Judge, Fifth Circuit.

[fol. 654]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18176

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Plaintiff,

versus

MARCOS PEREZ JIMENEZ, Defendant.

THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION and THE ROYAL BANK OF CANADA, Petitioners,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

FORTUNATO HERRARA and POLINVERSIONES, C.A., a Venezuelan Corporation, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

SILVIO GUTIERREZ, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

NAPOLEON DUPOUY, Petitioner,

versus

THE HONORABLE WILLIAM C. MATHES, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Respondents.

PEDRO A. GUITERREZ ALFARO and LOLA T. DE GUITTEREZ ALFARO, also known as LOLA T. DE GUITERREZ ALFARO, Petitioners,

versus

MANUEL ARISTEQUIETA, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela, Respondent.

Appeal from the United States District Court for the Southern District of Florida —and— Motions for Leave to File Petitions for Writs of Prohibition or mandamus.

Before Rives, Chief Judge, and Hutcheson and Jones, Circuit Judges.

AMENDED JUDGMENT—Filed March 28, 1960

It Is Ordered that the judgment of this Court entered on January 29, 1960 and issued on March 3, 1960 as and for a mandate be, and the same is hereby amended to read as follows:

This cause came on to be heard on all five appeals pending in this cause; that is, the joint appeal by the First National City Bank of New York, French American Banking Corporation, and the Royal Bank of Canada, the appeal of Silvio Gutierrez, the appeal of Napoleon Dupouy, the appeal of Fortunato Herrera and Polinversiones, C.A., and the appeal of Pedro A. [fol. 655] Gutierrez Alfaro and Lola T. de Gutierrez Alfaro, and on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the said District Court denying the motions to quash the subpoenas duces tecum in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to quash the subpoenas duces tecum; and that the petitions for writ of prohibition or mandamus are denied.

It is further ordered and adjudged that the appellants, The First National City Bank of New York, French American Banking Corporation, and the Royal Bank of Canada recover their taxable costs in this Court from the appellee, Manuel Aristequieta, Consul General of the Republic of Venezuela, on behalf of the Republic of Venezuela.

"Rives, Chief Judge, Dissenting."

March 25, 1960

[fol. 656]

SUPREME COURT OF THE UNITED STATES

No. 77—October Term, 1960

MANUEL ARISTEGUIETA, ETC., Petitioner,

vs.

FIRST NATIONAL CITY BANK OF NEW YORK ET AL.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 688 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.